

ESTTA Tracking number: **ESTTA1262377**

Filing date: **01/26/2023**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer information

Name	WRB, Inc.
Granted to date of previous extension	02/01/2023
Address	5865 NEAL AVE N #113 STILLWATER, MN 55082 UNITED STATES
Correspondence information	JAMES B MARTIN CEO WRB, INC. 5865 NEAL AVE N #113 STILLWATER, MN 55082 UNITED STATES Primary email: trademark@hammerschlagen.com 844-942-2548

Applicant information

Application no.	97012566	Publication date	10/04/2022
Opposition filing date	01/26/2023	Opposition period ends	02/01/2023
Applicant	Eichenfeld LLC 7126 FISHER ROAD OAKFIELD, NY 14125 UNITED STATES		

Goods/services affected by opposition

Class 028. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker
Class 041. First Use: None First Use In Commerce: None All goods and services in the class are opposed, namely: Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Other	Use in conjunction with an unlawful purpose. 37 CFR §2.69, TMEP §907

Marks cited by opposer as basis for opposition

U.S. registration no.	4804117	Application date	02/06/2015
Register	Principal		
Registration date	09/01/2015	Foreign priority date	NONE
Word mark	HAMMER-SCHLAGEN		
Design mark			
Description of mark	NONE		
Goods/services	Class 041. First use: First Use: Sep 1988 First Use In Commerce: Sep 1988 Entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs		

U.S. registration no.	5548112	Application date	07/30/2015
Register	Principal		
Registration date	08/28/2018	Foreign priority date	NONE
Word mark	NONE		
Design mark			
Description of mark	The mark consists of a three-dimensional configuration constituting trade dress comprising of a cylindrical cross-section of a tree with nails positioned around the outer circumference of its upward facing flat circular surface, and a cross-peen hammer whose head is shaped in the manner depicted in the drawing.		
Goods/services	Class 041. First use: First Use: Sep 1988 First Use In Commerce: Sep 1988 Entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into wood		

U.S. application no.	90453221	Application date	01/07/2021
Registration date	NONE	Foreign priority date	NONE
Word mark	HAMMER-SCHLAGEN		
Design mark			
Description of mark	NONE		
Goods/services	Class 028. First use: First Use: Feb 26, 1999 First Use In Commerce: Feb 26, 1999 Equipment sold as a unit for playing parlor games		

Attachments	Opposition.pdf(879026 bytes) Opposition Exhibit A.pdf(4731166 bytes) Opposition Exhibits B-C.pdf(3117514 bytes)
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Signature	/Jim Martin/
Name	JAMES B MARTIN
Date	01/26/2023

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:

Trademark Application Serial No. **97/012,566**
For The Mark **Knogle**
Published in the Official Gazette of **October 4, 2022**

WRB, Inc.,

Opposer,

v.

Eichenfeld, LLC,

Applicant.

Opposition No. _____

Notice Of Opposition

WRB, Inc., (“Opposer”) believes that it will be damaged by registration of the mark shown in United States Application Serial Number 97/012,566 (“Application”), and hereby opposes the same. As grounds for opposition, Opposer alleges as follows:

THE OPPOSER AND ITS INTELLECTUAL PROPERTY

1. Opposer is a corporation organized and existing under the laws of Minnesota, having a current registered office at 5865 Neal Ave N, #113 / Stillwater, MN 55082. (Exhibit A, pp.1-2.)

2. Opposer has continuously marketed and sold a nail driving game in interstate commerce while using the mark HAMMER-SCHLAGEN as a source identifier of the same at least as early as 1999. (Exhibit A, pp.3,8,14,16.)

3. In addition to its common law trademark rights in the mark HAMMER-SCHLAGEN, on or about February 6, 2015, Opposer filed a federal trademark application seeking to register the mark HAMMER-SCHLAGEN in international class 041 for

entertainment services in the nature of providing persons an opportunity to participate in a nail driving game. The application was assigned serial number 86/527,045.

4. On or about September 1, 2015, the United States Patent and Trademark Office granted Opposer United States Trademark Registration 4,804,117 which corresponds to application serial number 86/527,045; the registration and is valid, subsisting, and became incontestable at least as early as October 22, 2020. (Exhibit A, pp.3-5.)

5. Opposer has continuously marketed and sold a nail driving game in interstate commerce while using a specific trade dress ("Stump") as a source identifier of the same at least as early as 1999. (Exhibit A, p.6.) A depiction of the same follows:



6. In addition to its common law trademark rights in the Stump trade dress, on or about July 30, 2015, Opposer filed a federal trademark application seeking to register the Stump trade dress in international class 041 for entertainment services in the nature of providing persons an opportunity to participate in a nail driving game. The application was assigned serial number 86/710,523 and published on April 4, 2017.

7. On or about April 25, 2017, Applicant filed proceeding number 91,234,178 in the United States Patent And Trademark Office before the Trademark Trial And Appeal Board in opposition to the registration of Opposer's application serial number 86/710,523 asserting, generally, that: the Stump trade dress fails to function as a trademark; the Stump trade dress has failed to obtain the necessary acquired distinctiveness; and the

Stump trade dress is unregistrable because it is functional. Said proceeding was dismissed against Applicant with prejudice on July 23, 2018.

8. On August 28, 2018, the United States Patent and Trademark Office granted Opposer United States Trademark Registration 5,548,112 which corresponds to application serial number 86/710,523. This registration is valid and subsisting. (Exhibit A, pp.6-7.)

9. In addition to its common law trademark rights in the mark HAMMER-SCHLAGEN, on January 7, 2021, Opposer filed a federal trademark application seeking to register the mark HAMMER-SCHLAGEN in international class 028 for equipment sold as a unit to engage a nail driving game. The application was assigned serial number 90/453,221 and published for opposition on August 24, 2021. (Exhibit A, pp.8-23.)

10. On December 21, 2021, proceeding number 91,273,569 was filed in the United States Patent And Trademark Office before the Trademark Trial And Appeal Board in opposition to the registration of application serial number 90/453,221. On or about May 9, 2022, said opposition was (and remains) suspended pending the disposition of a civil action styled *WRB, Inc. v. Damm, LLC*, Case No. 0:21-CV-01899, filed August 23, 2021, in United States District Court for the District Of Minnesota. (Exhibit A, p.10.)

11. As demonstrated by the applications related to Registration Numbers 4,804,117 and 5,548,112, Opposer's HAMMER-SCHLAGEN mark and its related Stump trade dress are valid and enforceable since at least as early as 2015. (Exhibit A, pp.3,6.)

12. In 2021, federal courts affirmed Opposer owns its HAMMER-SCHLAGEN mark and Stump trade dress, and the same are valid and enforceable. (Exhibit B, pp.1-8.)

13. In 2022, nationwide survey evidence was gathered and analyzed by an expert (Exhibit B, pp.9-19) who reported 77.4% of the relevant public exposed to HAMMER-SCHLAGEN understand it to be a brand name (Exhibit B, p.16 (n.38)); that is, the public associates HAMMER-SCHLAGEN with a particular source or the products of that source.

14. Local, statewide, and national media reported on Opposer's use and protection of its trademarks and on the ownership, validity, and enforceability of the same. (Exhibit B, pp.20-28; Exhibit C, pp.13-14.)

THE APPLICANT AND ITS INTELLECTUAL PROPERTY

15. Eichenfeld, LLC, ("Applicant") is a limited liability company organized and existing under the laws of New York, having a registered address of 7126 Fisher Road / Oakfield, NY 14125. (Exhibit A, pp.24-25.)

16. On or about July 8, 2014, Applicant applied for a patent ("Patent") which was assigned application number 14/326,057, later maturing into United States Patent Number 9,295,906 (March 29, 2016). (Exhibit A, pp.26-42.)

17. In its Patent, Applicant asserts its invention "is directed to a collection of portable and easily transportable ... Hammerschlagen ... game pieces." (Exhibit A, p.36.)

18. In its Patent, Applicant asserts that "Hammer-Schlagen ... is a brand of the German game Nailspielen Shortly after opening in 1966, the first instance of Nailspielen in the United States was reportedly found at the Gasthaus Bavarian Hunter in Stillwater, Minn. It was played there in the traditional fashion until the restaurant owner's father branded the Nailspielen service and vested the brand of Hammer-Schlagen and the related intellectual property in WRB, Inc." (Exhibit A, p.36.)

19. The "Gasthaus Bavarian Hunter in Stillwater, Minn." and the "restaurant owner's father" (in law) as referenced in the Patent are predecessors of right to Opposer's family of intellectual property, and "WRB, Inc." as referenced in Applicant's Patent is Opposer. (*See WRB, Inc. v. Damm, LLC*, Case No. 0:21-CV-01899, Doc. #103, p.37-40; Exhibit A, p.36; Exhibit B, pp.22-23,26; Exhibit C, pp.1,4,9,14.)

20. Applicant asserts Opposer is "faced with several difficulties which have prevented more popular acceptance of such game" and that these difficulties have given rise

to Opposer's "need for nail hammering game pieces which are easily transportable and ones which solve all of the problems associated with procuring, transporting, deploying, gathering and using conventional nail hammering game pieces." (Exhibit A, p.36.)

21. Applicant depicts "prior art" in its Patent's Figure 1, which is Opposer's Stump trade dress, or at least something confusingly similar thereto. (Exhibit A, pp.27,37.)

22. In its Patent's Figures 2, 2A, 3, 7, 10 and 11, Applicant depicts how it intends for Opposer's Stump trade dress, or something confusingly similar thereto, to exist within the art. (Exhibit A, pp.28-30,32,34-35,37.)

23. By expressly directing the art of its Patent to Opposer's HAMMER-SCHLAGEN family of intellectual property, Applicant utilizes its Patent in an attempt to legitimize its counterfeiting of Opposer's brand.

24. Applicant has been engaged in the business of manufacturing, promoting, and selling a counterfeit of Opposer's brand of nail driving game under the word "MOBILESCHLAGEN" with an identical look-and-feel to Opposer's Stump trade dress, or something confusingly similar thereto, at least as early as June 12, 2016. (Exhibit C, p.5.)

25. In 2016, Applicant stated that "MobileSchlagen is a mobile version of the game of Hammerschlagen. Hammerschlagen is a German game ... introduced to the United States in 1957 when Carl Schoene, a German immigrant, moved to Minnesota."



26. The “Carl Schoene” referenced by Applicant is the “restaurant owner” identified in Applicant's Patent and a predecessor of right to Opposer's family of intellectual property. (See ¶¶ 18-19.)

27. In November 2016, the Wall Street Journal reiterated Applicant's claims and reported that Applicant's product is a mobile version of HAMMER-SCHLAGEN, explicitly connecting the name and look-and-feel of Applicant's product to Opposer's HAMMER-SCHLAGEN mark and Stump trade dress:



28. On September 19, 2014, Applicant registered “mobileschlagen.com” (the “Domain”) from which it marketed and sold its counterfeit of Opposer's HAMMER-SCHLAGEN brand of nail driving game. Applicant describes how to use its product:

How to Play – MöbileSchlägen

How to Play

The game is played by using the small end of a Mason's hammer, and taking turns hammering a 3" nail into a stump. The stump is usually a soft hardwood, such as Cottonwood, Poplar or Yellow Pine. The top of the hammer has to be level to the stump before the player makes his or her swing. Once they take their turn, they then pass the hammer to their right until all the nails are hammered into the stump with no head showing.

<https://www.mobileschlagen.com/how-to-play/>

29. By all accounts, Applicant's passing-off and trading upon Opposer's goodwill was a success: local and national media reported Applicant sold Opposer's brand of nail game (Exhibit C, pp.5-15), and the public pledged monetary support (Exhibit C, p.16).

30. In November 2016, Opposer contacted Applicant asserting that the word MOBILESCHLAGEN and its underlying good and the services offered therewith are a

counterfeit of Opposer's HAMMER-SCHLAGEN brand, demanding Applicant cease and desist use of Applicant's marks. (Exhibit C, pp.1-3.)

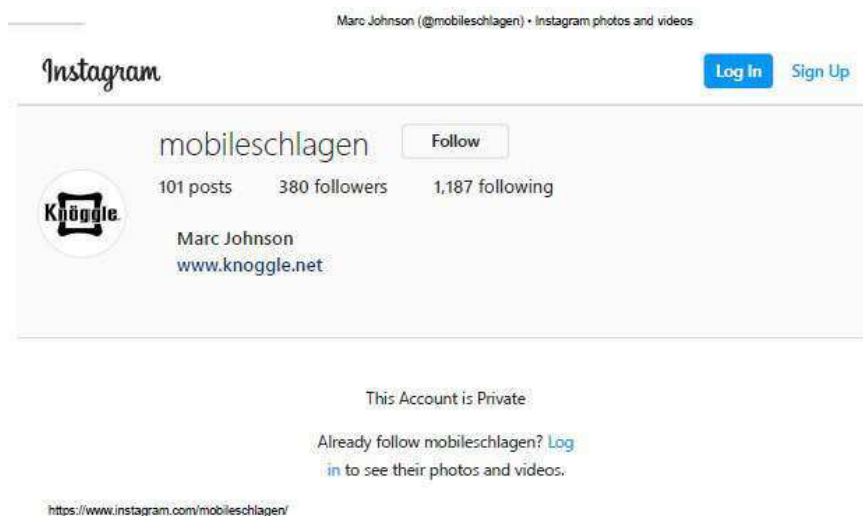
31. After receiving Opposer's communication as identified in paragraph 30, Applicant posted videos in promotion of its counterfeiting activities (see <<https://www.youtube.com/@mobileschlagen3141>>) and filed the opposition proceeding identified in paragraph 7.

32. After Applicant filed the opposition proceeding identified in paragraph 7, Opposer and Applicant spoke via telephone in 2017: Applicant rejected Opposer's verbal offer of trademark licensure and agreed to cease and desist its activities. (Exhibit C, p.4.)

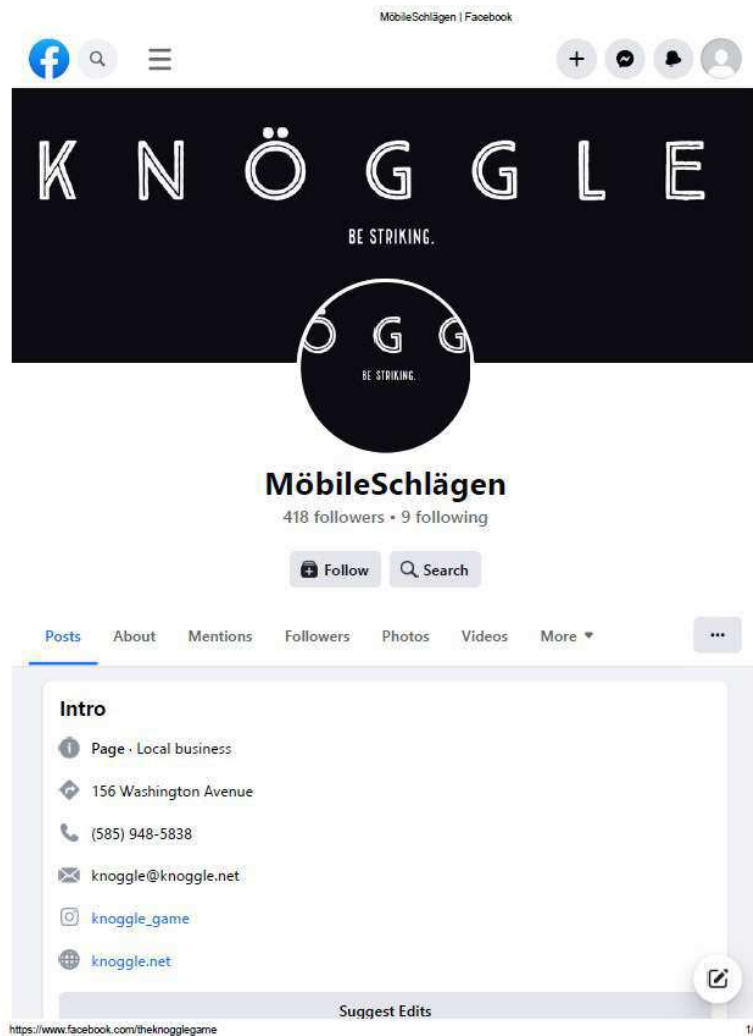
33. Following Applicant's representation to cease and desist, Opposer has been of the understanding that Applicant had stopped its counterfeiting activities. (Exhibit C, p.4.)

34. In November 2022, Opposer learned Applicant had not stopped using the MOBILESCHLAGEN counterfeit. (Exhibit C, p.4.)

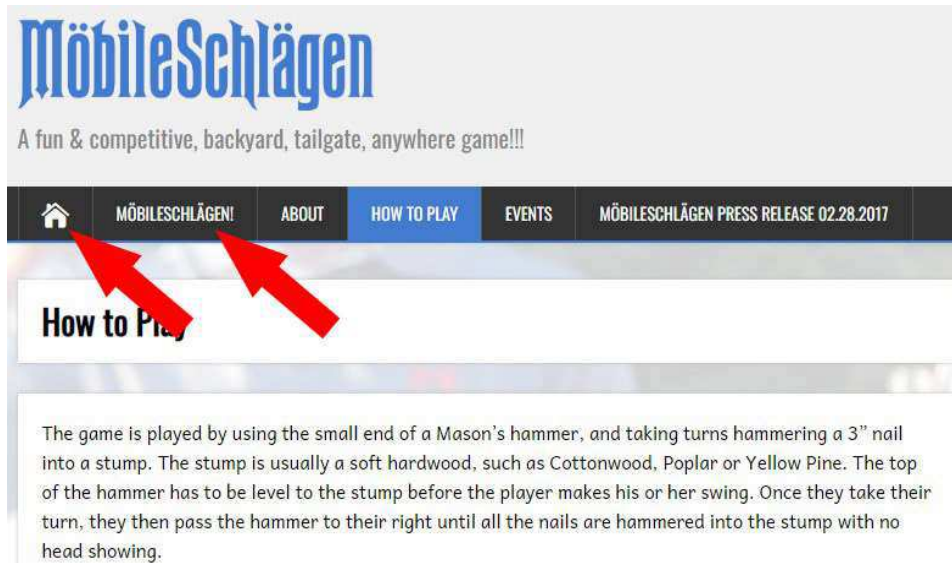
35. Since at least as early as September 28, 2022, Applicant has used the MOBILESCHLAGEN counterfeit on Instagram in conjunction with the applied-for mark to forward consumers to products sold under the applied-for mark:



36. Since as least as early as September 28, 2022, Applicant has used the MOBILESCHLAGEN counterfeit on Facebook in conjunction with the applied-for mark to forward consumers to products sold under the applied-for mark:



37. Since at least as early as September 28, 2022, Applicant maintained a website accessible via the Domain in such a way as to forward consumers to products sold under the applied-for mark; in example, by clicking on links to view Applicant's homepage (depicted via red arrows in the image on the next page):



38. The forwarding behavior of the Domain occurs because consumers accessing the root of the Domain are directed in such a way as to be presented with products sold under the applied-for mark at the domain “knoggle.net” (the “Synonym Domain”):

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Loading...

http://mobileschlagen.com/ |
18:35:12 September 27, 2022

Got an HTTP 301 response at crawl time

Redirecting to...

http://www.knoggle.net/

Impatient?
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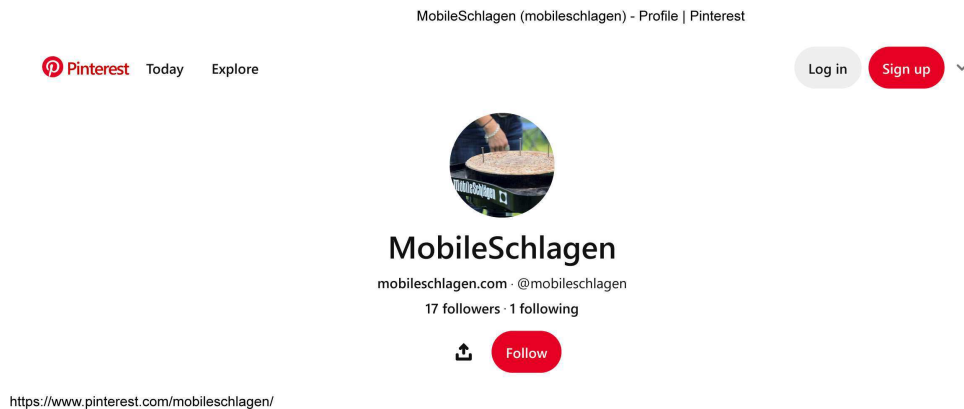
The Wayback Machine is an initiative of the Internet Archive, a 501(c)(3) non-profit, building a digital library of Internet sites and other cultural artifacts in digital form. Other projects include Open Library & archive-it.org.

Your use of the Wayback Machine is subject to the Internet Archive's Terms of Use.

39. Applicant registered the Synonym Domain on January 31, 2021, and is the owner and operator of the same. (Exhibit C, pp.17-19.)

40. Applicant has offered the applied-for products in commerce under the applied-for mark at least as early as March 28, 2022. (Exhibit C, pp.20-22.)

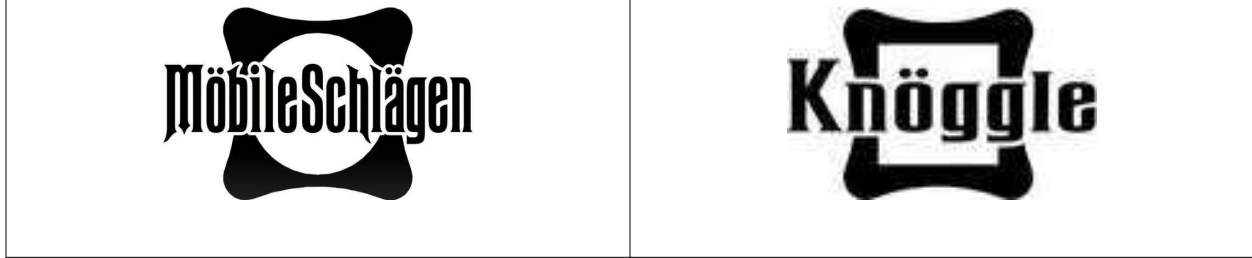
41. Since at least as early as September 27, 2022, Applicant promotes the MOBILESCHLAGEN counterfeit and the Domain in social media, like Pintrest, to forward consumers to products sold under the applied-for mark:



42. Since at least as early as September 27, 2022, Applicant promoted the MOBILESCHLAGEN counterfeit and the Domain in social media, like Twitter, to forward consumers to products sold under the applied-for mark:



43. The applied-for mark is even being used in nearly identical imagery:



44. In a recent letter to Opposer, Applicant states the product sold under the applied-for mark utilizes the Patent in a substantially identical manner as the counterfeit product originally marketed and sold under the MOBILESCHLAGEN counterfeit:

They have all been branded under the trade name
“Knöggle” and they are not in any way a counterfeit of your product. They have their
own patent protection and are not infringing on your product or brand.

45. Contrary to Applicant's claims, the applied-for mark is used in connection with the MOBILESCHLAGEN counterfeiting activities. To be direct to the point, the applied-for mark is a synonym of the MOBILESCHLAGEN counterfeit as Applicant uses said counterfeit to promote the products sold under the applied-for mark.

46. For all practical purposes, the product sold under the applied-for mark is a continuance of Applicant's MOBILESCHLAGEN counterfeiting activities.

47. On or about September 4, 2021, Applicant filed the Application in the United States Patent And Trademark Office (Exhibit A, pp. 43-66), which was published for opposition in the Official Gazette on October 4, 2022 (Exhibit A, pp.43-44,46).

48. Applicant's MOBILESCHLAGEN counterfeiting activities are taking place in conjunction with and in promotion of the applied-for mark.

49. The Application seeks to register the applied-for mark for services in international class 041 that are the same or similar to those identified in Opposer's United States Trademark Registrations 4,804,117 and 5,548,112. (Exhibit A, pp.43,48.)

50. The Application seeks to register the applied-for mark for goods in international class 028 that are the same or similar to those identified in Opposer's application serial number 90/453,221. (Exhibit A, pp.43,48.)

THE APPLIED-FOR MARK IS NOT REGISTERABLE

51. A mark is not registerable if it is used in conjunction with an unlawful purpose. 37 CFR § 2.69; TMEP § 907; *In re PharmaCann LLC*, 123 USPQ2d 122, 1123 (quoting *In re JJ206, LLC*, 120 USPQ 1568, 1569 (TTAB 2016) and *In re Brown*, 119 USPQ2d 1350, 1351 (TTAB 2016)) (“[w]e have consistently held that, to qualify for a federal ... registration, the use of a mark in commerce must be 'lawful.'”); *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 324 U.S. 806, 814 (1945) (“He who comes into equity must come with clean hands.”); *Steuben Foods, Inc. v. GEA Process Eng'g, Inc.*, 12-CV-00904-EAW-JJM, 8 (W.D.N.Y. Mar. 9, 2015) (“he who comes into equity must come with clean hands” (quoting *Precision Instrument Mfg.*)); *Lawn Managers, Inc. v. Progressive Lawn Managers, Inc.*, 959 F.3d 903, 912 (8th Cir. 2020) (“unclean hands may be invoked when ... willful act[s] concerning the cause of action which rightfully can be said to transgress equitable standards of conduct.”) (internal citations and quotations omitted).

52. In the immediate case, the applied-for mark is not registerable because it is likely to cause confusion under the doctrine of initial interest confusion and/or is being used in conjunction with an unlawful purpose.

A. Likelihood Of Confusion

53. As demonstrated by the filing dates of its pleaded applications, Opposer is the senior user. *Brown Shoe Co. v. Robbins*, 90 USPQ2d 1752, 1754 (TTAB 2009) (priority established by making pleaded registrations of record); *Kohler C. v. Baldwin Hardware Corp.*, 82 USPQ2d 1100, 1106 (TTAB 2007) (respondent may rely on the filing date of the application underlying its registration in establishing priority, in absence of allegation or

proof of date of first use earlier than this date); *Truescents LLC v. Ride Skin Care LLC*, 81 USPQ2d 1334, 1339 (TTAB 2006) (plaintiff may rely on plaintiff's application filing dates, subject to issuance of the registrations, for purposes of priority).

54. The initial interest confusion theory as a form of likelihood of confusion is actionable. See *HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd on other grounds*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (the Board found the likelihood of initial interest, pre-sale confusion overcame the sophisticated purchaser defense; on appeal, the Federal Circuit expressly avoided reaching the issue of initial interest confusion); *Grotrian, Helfferich, Schulz, Th. Steinweg Nachf. v. Steinway & Sons*, 523 F.2d 1331, 1341-42 (2d. Cir. 1975) (holding a trademark owner is harmed when a consumer is likely to believe an infringing mark has some connection with the trademark holder at the time said consumer is initially attracted); *Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.*, 426 F.3d 532, n.2, n.4 (2d Cir. 2005) (noting the Lanham Act protects against initial interest confusion); *Select Comfort Corp. v. Baxter*, 996 F.3d 925, 932-8 (8th Cir. 2021) (holding initial interest confusion at the time of advertising is an actionable theory of trademark infringement), *cert. den.* ___ U.S. ___, 142 S.Ct. 561, 211 L.Ed.2d 351 (2021); 4 J.McCarthy, Trademarks and Unfair Competition, § 23:6 (2021).

55. The identity of the marks and the relatedness of the goods sold thereunder outweigh any presumed sophisticated purchasing decision at early stages of the buying decision. See *HRL*, 12 USPQ2d at 1823 (similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods); *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162-63 (Fed. Cir. 2014). Thus, even if purchasers would be informed during the purchasing process that Applicant's products are not manufactured or sponsored by Opposer, the damage from likely confusion has already occurred.

56. Section 2(d) of the Trademark Act does not make a distinction between confusion arising at an early stage in the purchasing process and confusion arising at a later stage, so registration should be denied under the Trademark Act when there exists likelihood of confusion, no matter when it occurs. *HRL*, 12 USPQ2d at 1822 (finding initial interest confusion constitutes likelihood of confusion even though purchasers at the point of sale may not be confused); see also *Select Comfort*, 996 F.3d at 932 (8th Cir. 2021) (citations omitted); *Sussman-Automatic Corp. v. Spa World Corp.*, 15 F.Supp.3d 258, 266 (E.D.N.Y. 2014) (“it is well-established that ‘point-of-sale confusion is not the only confusion which the Lanham Act seeks to prevent; other forms of confusion, including ... initial interest confusion ... may also be actionable.’”) (quoting *Malletier*, 426 F.3d at 539 n.4); *deVere Group GmbH v. Opinion Corp.*, 877 F. Supp. 2d 67, 73 (E.D.N.Y. 2012) (“Harm occurs when a potential customer believes that the competing website is associated with the website the customer was originally searching for and will not resume searching for the original website.”) (internal quotations omitted).

57. The initial interest confusion doctrine looks at whether use of a mark was done “in a manner calculated to capture initial consumer attention even though no actual sale is finally completed as a result of the confusion.” *Dr. Seuss Enters. v. Penguin Books*, 109 F.3d 1394, 1405 (9th Cir. 1997).

58. Use of the MOBILESCHLAGEN counterfeit in connection with the applied-for mark, including on social media and with the Domain, is likely to confuse consumers at the onset of a consumer's buying decision.

59. The confusion is likely to occur because Applicant's actions at the initial stage of the sales process is likely to lead consumers into a mistaken belief the products later identified by the applied-for mark emanate from, are manufactured by, are sponsored by,

and/or are affiliated with Opposer. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed.Cir.1993).

60. Likelihood of confusion is a question of law with underlying factual findings made pursuant to the *DuPont* factors. *Stone Lion*, 746 F.3d at 1321 (citing *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 1381 (Fed.Cir.2006)).

61. If there is any doubt as to whether there is a likelihood of confusion, that doubt must be resolved in favor of Opposer and against Applicant. *Shell Oil*, 992 F.2d at 1209, 26 USPQ2d at 1691 (“Doubt is resolved against the newcomer, *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988), for the newcomer has the opportunity of avoiding confusion, and is charged with the obligation to do so.”); *In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1372 (TTAB 2009); *In re C.H. Hanson Co.*, 116 USPQ2d 1351 (TTAB 2015).

A.1. First *DuPont* Factor: Similarity Of Marks

62. In any likelihood of confusion analysis, the first of two key considerations is the similarity between the marks. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). The similarity of the marks is determined by focusing on “'the marks in their entirety as to appearance, sound, connotation, and commercial impression.'” *Stone Lion*, 746 F.3d at 1321 (quoting *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371 (Fed.Cir.2005) (quoting *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361) (C.C.P.A.1973)).

63. Applicant asserts it created the MOBILESCHLAGEN name in order to confuse consumers into believing that Applicant's product is a mobile version of Opposer's product. As was intended by Applicant, the MOBILESCHLAGEN counterfeit appears and sounds like Opposer's HAMMER-SCHLAGEN mark.

64. When coupled with the underlying products sold under the MOBILESCHLAGEN counterfeit containing the Stump trade dress, public admissions made by Applicant regarding its intent to counterfeit the HAMMER-SCHLAGEN brand, and reporting of the same by local and national news organizations, the connotation and commercial impression of the MOBILESCHLAGEN counterfeit, and its applied-for mark as a synonym, is that of Opposer's HAMMER-SCHLAGEN brand.

65. The applied-for mark is used as a synonym of the MOBILESCHLAGEN counterfeit: Applicant's products were first offered under the MOBILESCHLAGEN counterfeit and this use continued thru the time of Application in conjunction with the products offered under the applied-for mark thru the time of the Application's publication.

66. The first *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.2. Second *DuPont* Factor: Similarity Of Goods Or Services

67. In any likelihood of confusion analysis, the second of two key considerations is the similarities between the products. See *Federated Foods, supra*. The second *DuPont* factor therefore considers “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 1306 (Fed.Cir.2018) (quoting *DuPont* at 1361); *Stone Lion*, 746 F.3d at 1320.

68. The applied-for products in the Application and Opposer's pleaded marks is substantially identical. *Nat'l Football League v. Jasper All. Corp.*, 16 USPQ2d 1212, 1216 & n.5 (TTAB 1990) (the manner in which products are identified is controlling); *Stone Lion* at 1323 (registrability must be decided on the identification of products as applied-for).

69. National news media reported the parties' products are the same. TMEP § 1207.01(a)(vi) (“Evidence of relatedness may include news articles ... showing that the relevant goods or services are used ... by the same purchasers ...”).

70. As the nature of the products described in the Application at issue and Opposer's pleaded registrations and applications are in the same international classes for substantially the same products, and evidence of relatedness actually exists, the second *DuPont* factor weighs in favor of finding a likelihood of confusion. See also, in example, *Detroit Athletic* at 1306 (“Thus, while the goods and services are not identical, they substantially overlap, which weighs in favor of finding a likelihood of confusion.”).

A.3. Third *DuPont* Factor: Trade Channels

71. The third *DuPont* factor considers “[t]he similarity or dissimilarity of established, likely-to-continue trade channels.” *Stone Lion* at 1322-3.

72. It is proper to focus on the applications and registrations at issue rather than real-world conditions, because “the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application.” *Stone Lion* at 1323 (quoting *Octocom Sys., Inc. v. Houston Comp. Servs. Inc.*, 918 F.2d 937, 942 (Fed.Cir.1990)). Even assuming there is no overlap between Applicant's and Opposer's current customers, this tribunal must decline to look beyond the applications and registrations at issue. *Id.* An application with “no restriction on trade channels” cannot be “narrowed by testimony that the applicant's use is, in fact, restricted to a particular class of purchasers.” *Id.* (quoting *Octocom* at 943).

73. The application and the registrations at issue contain no limitations on the channels of trade or classes of purchasers and the recited products are substantially identical; therefore, both parties' products travel through all usual channels of trade and are offered to all normal potential purchasers thereby demonstrating the third *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.4. Fourth *DuPont* Factor: Buyer Sophistication

74. The fourth *DuPont* factor considers “[t]he conditions under which and buyers to whom sales are made, i.e. ‘impulse’ vs. careful, sophisticated purchasing.” *Stone Lion* at 1323 (quoting *DuPont* at 1361).

75. The goods and services in the Application are not restricted to high-dollar investments or sophisticated consumers, but rather could be offered to, and consumed by, anyone with money, including ordinary consumers seeking a nail driving game. *Id.*

76. It would make little sense to consider only the Applicant's and Opposer's current activities when the application, not current use, determines the scope of Opposer's post-registration benefit against the Application. *Id.* at 1324.

77. The products identified in the Application are substantially identical to the products identified in Opposer's pleaded registrations and applications.

78. Precedent requires the decision to be based “on the least sophisticated potential purchasers.” *Id.* at 1325 (quoting *Gen. Mills, Inc. v. Fage Dairy Proc. Indus. S.A.*, 100 U.S.P.Q.2d 1584, 1600 (T.T.A.B.2011), judgment set aside on other grounds, 2014 WL 343267 (T.T.A.B. Jan. 22, 2014); *cf. Ford Motor Co. v. Summit Motor Prods., Inc.*, 930 F.2d 277, 293 (3d Cir.1991) (stating, in the context of a trademark infringement case, that “when a buyer class is mixed, the standard of care to be exercised by the reasonably prudent purchaser will be equal to that of the least sophisticated consumer in the class”)).

79. Given the considerations of initial interest confusion, the least sophisticated potential purchaser is not immune from source confusion, so the fourth *DuPont* factor weighs in favor of finding a likelihood of confusion. See *Stone Lion* at 1325 (ordinary consumers will exercise care when making purchasing decisions, but are not immune from source confusion where similar marks are used in connection with related goods and services) (internal citations omitted).

A.5. Fifth *DuPont* Factor: Strength Of Mark

80. The fifth *DuPont* factor considers the strength of Opposer's marks. *Stone Lion* at 1320.

81. Opposer has used its marks in commerce since at least 1999 and Opposer's predecessors of right used Opposer's marks in some form at least as early as 1988.

82. By acknowledging Opposer's brand, its predecessors, and its origins, along with stating its intent to counterfeit the same, Applicant recognizes the strength of Opposer's marks.

83. National and local media have publicized Opposer's marks, thereby contributing to their strength.

84. Opposer's brand is understood and used by the consuming public as a source identifier of Opposer's products; it is not generic, so it is (at worst) distinctive.

85. Opposer's pleaded registrations are *prima face* evidence the strength of Opposer's marks. Trademark Act § 7(b), *Massey Junior College, Inc. v. Fashion Institute of Technology*, 492 F.2d 1399, 181 USPQ 272, 274 (CCPA 1974) (registration is *prima facie* evidence of validity of registration, ownership of mark, and exclusive right to use it).

86. Permanent injunctions entered by federal district courts are *prima face* evidence the strength of Opposer's marks.

87. As the Opposer's marks identify Opposer in the mind of the consuming public, and they are not generic, the fifth *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.6. Sixth *DuPont* Factor: Number And Nature Of Similar Third-Party Marks

88. The sixth *DuPont* factor is the number and nature of similar third-party marks for the products at issue. *Stone Lion* at 1320.

89. A large number of active third-party registrations including the same or similar term or mark component for the same or similar goods or services may be given some weight to show, in the same way that dictionaries are used, that a mark or a portion of a mark has a normally understood descriptive or suggestive connotation, leading to the conclusion that the term or mark component is relatively weak. See, e.g., *Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1339, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015); *Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917, 189 USPQ 693, 694-95 (C.C.P.A. 1976); *Tao Licensing, LLC v. Bender Consulting Ltd.*, 125 USPQ2d 1043, 1059 (TTAB 2017); *Primrose Ret. Cmty., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1036 (TTAB 2016); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1471 (TTAB 2014); *In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1153-54 (TTAB 2012); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991).

90. In the immediate case, there is only one third-party mark registration that is confusingly similar to Opposer's HAMMER-SCHLAGEN mark for the products at issue, namely for goods, which is currently being litigated for cancellation (see ¶ 10).

91. With only one third-party registration including the same or similar term or mark component for the applied-for products (which is being litigated for cancellation) the sixth *DuPont* factor weighs in favor of finding a likelihood of confusion. *In re Thor Tech, Inc.*, 113 USPQ2d 1546 (TTAB 2015) (when the register is absent of similar marks, a likelihood of confusion is favored) (citing *Keebler Co. v. Associated Biscuits Limited*, 207 USPQ 1034 (TTAB 1980)).

A.7. Seventh *DuPont* Factor: Actual Confusion

92. The seventh *DuPont* factor is the nature and extent of actual confusion. *Stone Lion* at 1319 (quoting *DuPont* at 1361).

93. It is well settled the relevant test is likelihood of confusion, so it is unnecessary to show actual confusion to establish likelihood of confusion. *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002).

94. Local and national news media have expressed actual confusion between Applicant's products and Opposer's brand since at least as early as 2016, which paragraph 25 demonstrates was intended by Applicant.

95. Though actual confusion need not be demonstrated, it is here. Thus, the seventh *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.8. Eighth *DuPont* Factor: Concurrent Use

96. The eighth *DuPont* factor is the length of time during and conditions under which there has been concurrent use without evidence of actual confusion. *Detroit Athletic Co.* at 1309 (quoting *DuPont* at 1361); *Stone Lion* at 1319-20.

97. While evidence the consuming public was not actually confused is legally relevant to the analysis, it is not dispositive. *Detroit Athletic Co.* at 1309 (citations omitted). This is particularly true in the context of an ex parte proceeding. *Id.* Likelihood of confusion in this context can be established even in the face of evidence suggesting that the consuming public was not actually confused. *Id.* (citing *In re Majestic Distilling Co.*, 315 F.3d 1311, 1317 (Fed. Cir. 2003) (“The lack of evidence of actual confusion carries little weight, especially in an ex parte context.” (citation omitted))).

98. Opposer submits that no concurrent use without actual confusion exists.

99. As dispositive evidence should not be presented to the Board on this factor, the eighth *DuPont* factor will not likely be able to be weighed in favor of either party.

A.9. Ninth *DuPont* Factor: Extent Of Use

100. The ninth *DuPont* factor is the variety of goods on which a mark is or is not used. *Stone Lion* at 1320 (quoting *DuPont* at 1361).

101. Opposer's HAMMER-SCHLAGEN mark is used on a variety of goods as demonstrated by applications and registrations in the Office, namely: Reg. No. 4,804,117 (nail driving services); Reg. No. 6,608,883 (malt beverages); App. Ser. No. 97/109,396 (computerized nail driving games); and App. Ser. No. 90/453,221 (nail driving goods).

102. This tribunal should also note the length of time Opposer used its HAMMER-SCHLAGEN mark and related Stump trade dress in commerce (since at least as early as 1999) in relation to the length of time Applicant has used its counterfeit (since 2016) and the applied-for mark (since 2022).

103. As there are a variety of goods on which Opposer's mark has been used in some form for over two decades, the ninth *DuPont* factor weighs in favor of finding a likelihood of confusion. See *Olymp-Herrenwaschfabriken Bezner GmbH & Co.*, 224 USPQ 497, 498 (TTAB 1984); *U.S. Olympic Comm. v. Org. for Sport Aviation Competition*, 2002 TTAB Lexis 195 (TTAB 2002).

A.10. Tenth *DuPont* Factor: Interference

104. The tenth *DuPont* factor is the market interface by Applicant upon the commercial activities of Opposer. *Stone Lion* at 1320 (quoting *DuPont* at 1361).

105. Applicant earlier interfered in the market upon the commercial activities of Opposer by opposing at least one of Opposer's marks. (See, in example, ¶ 7.)

106. Applicant interfered in the market upon the commercial activities of Opposer by intending to trade, and actually trading, upon Opposer's goodwill via counterfeiting.

107. The Application demonstrates Applicant is again acting in the same or similar channels of trade with substantially identical consumers as those of Opposer.

108. Additionally, it is virtually impossible to determine the number of customers or potential customers and corresponding business profit which Opposer has lost and/or Applicant has gained as a result of Applicant's bad faith and unlawful use.

109. The tenth *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.11. Eleventh *DuPont* Factor: Right To Exclude

110. The eleventh *DuPont* factor is the extent to which Opposer has a right to exclude others. *Stone Lion* at 1320 (quoting *DuPont* at 1361).

111. Opposer's applications and registrations are *prima face* evidence of its right to exclude others from use of its marks on the applied-for products. 15 U.S.C. § 1115(a).

112. Opposer is also the senior user of its marks and has a priority right to exclude others which arises out of said priority.

113. Opposer registration for the applied-for products and priority use of the same establishes the eleventh *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.12. Twelfth *DuPont* Factor: Extent Of Potential Confusion

114. The twelfth *DuPont* factor is the extent of potential confusion, i.e., whether de minimis or substantial. *Stone Lion* at 1320 (quoting *DuPont* at 1361).

115. As Applicant expressed its desire to counterfeit Opposer's brand and the initial interest confusion doctrine is applicable, the extent of potential confusion is substantial; the twelfth *DuPont* factor weighs in favor of finding a likelihood of confusion.

A.13. Thirteenth *DuPont* Factor: Effect Of Use

116. The thirteenth *DuPont* factor is any other established fact probative of the effect of use. *Stone Lion* at 1320 (quoting *DuPont* at 1361).

117. Applicant expressed its desire to counterfeit Opposer's brand and/or trade upon Opposer's goodwill.

118. Applicant is using the applied-for mark in conjunction with other unlawful activities, as further described below.

119. The thirteenth *DuPont* factor weighs in favor of Opposer.

B. Cybersquatting

120. A person engages in the act of cybersquatting if that person: has a bad faith intent to profit from that mark, and registers, traffics in, or uses a domain name that, in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark. 15 U.S.C. § 1125(d)(1)(A).

121. The MOBILESCHLAGEN counterfeit, which is confusingly similar to Opposer's HAMMER-SCHLAGEN mark, is the root of the Domain: the Domain is identical or confusingly similar to Opposer's mark.

122. At least as early as the date of the Application, Applicant has demonstrated a bad faith intent to profit by using the Domain in such a way as to traffic-in consumers to products sold under the applied-for mark. 15 U.S.C. § 1125(d)(1)(B)(i)(V); *Dudley v. Healthsource Chiropractic, Inc.*, 585 F. Supp. 2d 433, 442 (W.D.N.Y. 2008) (“Specifically, the ACPA was designed to focus on individuals who ... prey on consumer confusion by misusing the domain name to divert customers from the mark owner's site to the cybersquatter's own site, and target distinctive marks to defraud consumers, including to engage in counterfeiting activities.”) (internal quotations and citations omitted); *Coca-Cola Co. v. Purdy*, 382 F.3d 774, 789 (8th Cir. 2004) (cybersquatting encompasses “divert[ing] Internet users from their intended online destinations”).

123. As recently as 11 November 2022, Applicant expressed its bad faith intent to profit by offering to sell the Domain to Opposer:

Responding to your request to acquire the domain name, the owners of that domain invite you to make an offer if you would like to purchase those assets.

15 U.S.C. § 1125(d)(1)(B)(i)(V); *Sporty's Farm LLC v. Sportsman's Market, Inc.*, 202 F.3d 489, 493 (2nd Cir. 2000), *cert. den.* 530 US 1262 (“Cybersquatting involves the registration as domain names of well-known trademarks by non-trademark holders who then try to sell the names back to the trademark owners.”); *Coca-Cola Co.* at 786 (“A proposal to exchange domain names for valuable consideration is not insignificant in respect to the issue of bad faith intent to profit.”).

124. Opposer's HAMMER-SCHLAGEN mark was at least distinctive upon registration of the Domain and/or Synonym Domain.

CONCLUSION

WHEREFORE, Opposer believes and avers that it will be damaged by Applicant's registration and respectfully requests this Opposition be sustained and registration of the applied-for mark shown in the Application be refused.

Dated: January 26, 2023

Respectfully Submitted,

WRB, INC.

/s/ James Martin

By its CEO, James Martin

5865 Neal Ave N / #113

Stillwater, MN 55082

(844) WHACK-IT

trademark@hammerschlagen.com

Opposer

Exhibit A

Business Record Details »

Minnesota Business Name
WRB, Inc.

Business Type
Business Corporation (Domestic)

MN Statute
302A

File Number
10M-109

Home Jurisdiction
Minnesota

Filing Date
01/26/1999

Status
Active / In Good Standing

Renewal Due Date
12/31/2024

Registered Office Address
5865 Neal Ave N #113
Stillwater, MN 55082
USA

Number of Shares
100,000

Registered Agent(s)
None Provided

Chief Executive Officer
James Martin
5865 NEAL AVE N / #113
STILLWATER, MN 55082
USA

Principal Executive Office Address
5865 NEAL AVE N / #113
STILLWATER, MN 55082
USA

Filing History

Filing History

Select the item(s) you would like to order: Order Selected Copies

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	01/26/1999	Original Filing - Business Corporation (Domestic) (Business Name: WRB, Inc.)	

	Filing Date	Filing	Effective Date
<input type="checkbox"/>	11/24/2014	Registered Office and/or Agent - Business Corporation (Domestic)	
<input type="checkbox"/>	7/5/2017	Registered Office and/or Agent - Business Corporation (Domestic)	
<input type="checkbox"/>	1/25/2022	Administrative Dissolution - Business Corporation (Domestic)	
<input type="checkbox"/>	2/8/2022	Annual Reinstatement - Business Corporation (Domestic)	

United States of America

United States Patent and Trademark Office

Hammer-Schlagen

Reg. No. 4,804,117

Registered Sep. 1, 2015

Int. Cl.: 41

SERVICE MARK

PRINCIPAL REGISTER

WRB, INC. (MINNESOTA CORPORATION), DBA HAMMER-SCHLAGEN
SUITE 230
105 NEW ENGLAND PL.
STILLWATER, MN 55082

FOR: ENTERTAINMENT SERVICES IN THE NATURE OF PROVIDING PERSONS AN OPPORTUNITY TO PARTICIPATE IN A GAME IN WHICH PARTICIPANTS DRIVE NAILS INTO LOGS , IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-0-1988; IN COMMERCE 2-26-1999.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,405,337.

THE ENGLISH TRANSLATION OF "HAMMER-SCHLAGEN" IN THE MARK IS "HAMMER BEATING".

SEC. 2(F).

SER. NO. 86-527,045, FILED 2-6-2015.

LINDSEY BEN, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

From: TMOOfficialNotices@USPTO.GOV
Sent: Thursday, October 22, 2020 11:02 PM
To: trademark@hammerschlagen.com
Cc: trademark@hammerschlagen.com
Subject: Official USPTO Notice of Acceptance/Acknowledgement Sections 8 and 15: U.S. Trademark RN 4804117: HAMMER-SCHLAGEN

U.S. Serial Number: 86527045
U.S. Registration Number: 4804117
U.S. Registration Date: Sep 1, 2015
Mark: HAMMER-SCHLAGEN
Owner: WRB, Inc.

Oct 22, 2020

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF ACKNOWLEDGEMENT UNDER SECTION 15

The declaration of incontestability filed for the above-identified registration meets the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065. **The Section 15 declaration is acknowledged.**

The registration will remain in force for the class(es) listed below, unless canceled by an order of the Commissioner for Trademarks or a Federal Court, as long as the requirements for maintaining the registration are fulfilled as they become due.

Class(es):
041

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500

REQUIREMENTS FOR MAINTAINING REGISTRATION

WARNING: Your registration will be canceled if you do not file the documents below during the specified statutory time periods.

Requirements in the First Ten Years

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between the 9th and 10th years after the registration date. See 15 U.S.C. §§1058, 1059.

Requirements in Successive Ten-Year Periods

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

*****THE USPTO IS NOT REQUIRED TO SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE OWNER SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.*****

To check the status of this registration, go to https://tsdr.uspto.gov/#caseNumber=86527045&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=statusSearch or contact the Trademark Assistance Center at 1-800-786-9199.

To view this notice and other documents for this registration on-line, go to https://tsdr.uspto.gov/#caseNumber=86527045&caseSearchType=US_APPLICATION&caseType=DEFAULT&searchType=documentSearch NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

* **For further information, including information on filing and maintenance requirements for U.S. trademark applications and registrations and required fees, please consult the USPTO website at <https://www.uspto.gov/trademark/> or contact the Trademark Assistance Center at 1-800-786-9199.**

United States of America

United States Patent and Trademark Office



Reg. No. 5,548,112

Registered Aug. 28, 2018

Int. Cl.: 41

Service Mark

Principal Register

WRB, Inc. (MINNESOTA CORPORATION), DBA Hammer-Schlagen
5865 Neal Ave N
#113
Stillwater, MINNESOTA 55082

CLASS 41: Entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into wood

FIRST USE 9-00-1988; IN COMMERCE 2-26-1999

The mark consists of a three-dimensional configuration constituting trade dress comprising of a cylindrical cross-section of a tree with nails positioned around the outer circumference of its upward facing flat circular surface, and a cross-peen hammer whose head is shaped in the manner depicted in the drawing.

OWNER OF U.S. REG. NO. 2405337

SEC.2(F)

SER. NO. 86-710,523, FILED 07-30-2015



Andrei Iancu

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

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Mark: HAMMER-SCHLAGEN

Hammer-Schlagen

US Serial Number: 90453221

Application Filing Date: Jan. 07, 2021

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Opposition Pending

The pending trademark application has been examined by the Office and was published for opposition, at which time one or more oppositions were filed but they have not yet been decided.

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Dec. 21, 2021

Publication Date: Aug. 24, 2021

Mark Information

Mark Literal Elements: HAMMER-SCHLAGEN

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Translation: The English translation of the word "HAMMER-SCHLAGEN" in the mark is "hammer- beating".

Related Properties Information

Claimed Ownership of US Registrations: 2405337, 4804117

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (()) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Equipment sold as a unit for playing parlor games

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 1(a)

First Use: Feb. 26, 1999

Use in Commerce: Feb. 26, 1999

Used Anywhere in Another Form: The mark was first used anywhere in a different form other than that sought to be registered at least as early as 09/00/1988

Used in Commerce in Another Form: The mark was first used in commerce in a different form other than that sought to be registered at least as early as 02/26/1999

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Filed ITU: No

Currently ITU: No

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: WRB, Inc.

DBA, AKA, Formerly: DBA Hammerschlagen

Owner Address: 5865 Neal Ave N / #113
Stillwater, MINNESOTA UNITED STATES 55082

Legal Entity Type: CORPORATION

State or Country Where Organized: MINNESOTA

Attorney/Correspondence Information

Attorney of Record - None

Correspondent

Correspondent Name/Address: WRB, INC.
5865 NEAL AVE N / #113
STILLWATER, MINNESOTA UNITED STATES 55082

Phone: 844-942-2548

Correspondent e-mail: trademark@hammerschlagen.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 21, 2021	OPPOSITION INSTITUTED NO. 999999	273569
Sep. 22, 2021	EXTENSION OF TIME TO OPPOSE RECEIVED	
Aug. 24, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Aug. 24, 2021	PUBLISHED FOR OPPOSITION	
Aug. 04, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jul. 15, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jul. 15, 2021	EXAMINER'S AMENDMENT ENTERED	88888
Jul. 15, 2021	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jul. 15, 2021	EXAMINERS AMENDMENT E-MAILED	6328
Jul. 15, 2021	EXAMINERS AMENDMENT -WRITTEN	92464
Jul. 15, 2021	ASSIGNED TO EXAMINER	92464
Apr. 07, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	
Jan. 11, 2021	NEW APPLICATION ENTERED	

TM Staff and Location Information

TM Staff Information

TM Attorney: BODRI, KRISTIN MARIE

Law Office Assigned: LAW OFFICE 105

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Jul. 19, 2021

Proceedings

Summary			
Number of Proceedings: 2			
Type of Proceeding: Opposition			
Proceeding Number:	91273569	Filing Date:	Dec 21, 2021
Status:	Suspended	Status Date:	Feb 04, 2022
Interlocutory Attorney:	MARY CATHERINE FAINT		
Defendant			
Name:	WRB, Inc.		
Correspondent Address:	WRB, INC. 5865 NEAL AVE N / #113 STILLWATER MN UNITED STATES , 55082		
Correspondent e-mail:	trademark@hammerschlagen.com		
Associated marks			
Mark	Application Status	Serial Number	Registration Number
HAMMER-SCHLAGEN	Opposition Pending	90453221	
Plaintiff(s)			
Name:	DAMM, LLC		
Correspondent Address:	PAUL DIETZ DIETZ LAW OFFICE LLC 4975 WILDERNESS LAKE CIR ELKO NEW MARKET MN UNITED STATES , 55020		
Correspondent e-mail:	paul@dietzlawoffice.com		
Associated marks			
Mark	Application Status	Serial Number	Registration Number
MINNESCHLAGEN	Registered	88907094	6230202
Prosecution History			
Entry Number	History Text	Date	Due Date
13	SUSP PEND DISP OF CIVIL ACTION	May 09, 2022	
12	D OPP/RESP TO MOTION FOR DEFAULT JUDGMENT	Feb 22, 2022	
11	D REPLY IN SUPPORT OF MOTION TO EXTEND	Feb 12, 2022	
10	D REPLY IN SUPPORT OF MOT TO SUSP	Feb 07, 2022	
9	SUSP PEND DISP OF OUTSTNDNG MOT	Feb 04, 2022	
8	P MOT FOR DEFAULT JUDGMENT	Feb 02, 2022	
7	P OPP/RESP TO MOT FOR EXT	Feb 02, 2022	
6	D MOT FOR EXT W/O CONSENT	Jan 28, 2022	
5	P OPP/RESP TO MOT TO SUSPEND	Jan 18, 2022	
4	D MOT TO SUSP PEND DISP CIV ACTION	Dec 29, 2021	
3	INSTITUTED	Dec 21, 2021	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Dec 21, 2021	Jan 30, 2022
1	FILED AND FEE	Dec 21, 2021	
Type of Proceeding: Extension of Time			
Proceeding Number:	90453221	Filing Date:	Sep 22, 2021
Status:	Terminated	Status Date:	Dec 22, 2021
Interlocutory Attorney:			
Defendant			
Name:	WRB, Inc.		

Correspondent WRB, INC.
Address: 5865 NEAL AVE N / #113
STILLWATER MN UNITED STATES , 55082

Correspondent e-mail: trademark@hammerschlagen.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
HAMMER-SCHLAGEN	Opposition Pending	90453221	
Potential Opposer(s)			

Name: DAMM, LLC

Correspondent PAUL DIETZ
Address: HAUGEN LAW FIRM PLLP
121 SOUTH EIGHTH STREET, SUITE 1130
MINNEAPOLIS MN UNITED STATES , 55402

Correspondent e-mail: pdietz@haugenlaw.com

Associated marks			
Mark	Application Status	Serial Number	Registration Number
Prosecution History			
Entry Number	History Text	Date	Due Date
2	EXT GRANTED	Sep 22, 2021	
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	Sep 22, 2021	

From: TMOOfficialNotices@USPTO.GOV
Sent: Tuesday, August 24, 2021 01:35 AM
To: trademark@hammerschlagen.com
Subject: Official USPTO Notice of Publication Confirmation: U.S. Trademark SN 90453221: HAMMER-SCHLAGEN

TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION

U.S. Serial Number: 90453221
Mark: HAMMER-SCHLAGEN
International Class(es): 028
Owner: WRB, Inc.
Docket/Reference Number:

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Aug 24, 2021.

To Review the Mark in the TMOG:

Click on the following link or paste the URL into an internet browser: <https://tmog.uspto.gov/#issueDate=2021-08-24&serialNumber=90453221>

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. For corrections or amendments after publication, please use the Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment Form, accessible at <https://teas.uspto.gov/office/ppa>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

Significance of Publication for Opposition:

- * Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a certificate of registration should issue.

To check the status of the application, go to https://tsdr.uspto.gov/#caseNumber=90453221&caseType=SERIAL_NO&searchType=statusSearch or contact the Trademark Assistance Center at 1-800-786-9199. Please check the status of the application at least every three (3) months after the application filing date.

To view this notice and other documents for this application on-line, go to https://tsdr.uspto.gov/#caseNumber=90453221&caseType=SERIAL_NO&searchType=documentSearch. NOTE: This notice will only become available on-line the next business day after receipt of this e-mail.

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 90453221

Filing Date: 01/07/2021

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	Hammer-Schlagen
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Hammer-Schlagen
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	WRB, Inc.
DBA/AKA/TA/FORMERLY	DBA Hammerschlagen
*MAILING ADDRESS	5865 Neal Ave N / #113
*CITY	Stillwater
*STATE (Required for U.S. applicants)	Minnesota
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	55082
PHONE	844-942-2548
*EMAIL ADDRESS	XXXX
WEBSITE ADDRESS	hammerschlagen.com
LEGAL ENTITY INFORMATION	
*TYPE	CORPORATION
*STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY OF INCORPORATION	Minnesota
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	028

*IDENTIFICATION	Equipment sold as a unit for playing parlor games
*FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/26/1999
FIRST USE IN COMMERCE DATE	At least as early as 02/26/1999
SPECIMEN FILE NAME(S)	
JPG FILE(S)	\\TICRS\EXPORT18\IMAGEOUT18\904\532\90453221\xml1\FTK0003.JPG
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	\\TICRS\EXPORT18\IMAGEOUT18\904\532\90453221\xml1\FTK0005.JPG
ORIGINAL PDF FILE	SPE0-1-17421971-202101071_60354656858_.name-website.pdf
CONVERTED PDF FILE(S) (1 page)	\\TICRS\EXPORT18\IMAGEOUT18\904\532\90453221\xml1\FTK0006.JPG
SPECIMEN DESCRIPTION	Picture of the goods for sale, close-up of a plate of the goods for sale, hangtag attached to the goods for sale, and website promoting the sale of the goods.
WEBPAGE URL	stumpdgame.com
WEBPAGE DATE OF ACCESS	01/07/2021
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	The English translation of HAMMERSCHLAGEN in the mark is HAMMER BEATING.
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	The applicant claims ownership of active prior U.S. Registration Number(s) 2405337, 4804117, 5548112, and others.
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
USE OF THE MARK IN ANOTHER FORM	The mark was first used anywhere in a different form other than that sought to be registered at least as early as 09/00/1988, and in commerce at least as early as 02/26/1999.
CORRESPONDENCE INFORMATION	
NAME	WRB, Inc.
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	trademark@hammerschlagen.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	NOT PROVIDED
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Plus
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	250
*TOTAL FEES DUE	

* TOTAL FEES DUE	250
* TOTAL FEES PAID	250
SIGNATURE INFORMATION	
* SIGNATURE	/Jim Martin/
* SIGNATORY'S NAME	James B Martin
* SIGNATORY'S POSITION	CEO
SIGNATORY'S PHONE NUMBER	844-942-2548
* DATE SIGNED	01/07/2021
SIGNATURE METHOD	Signed directly within the form

Trademark/Service Mark Application, Principal Register**TEAS Plus Application****Serial Number: 90453221****Filing Date: 01/07/2021****To the Commissioner for Trademarks:****MARK:** Hammer-Schlagen (Standard Characters, see [mark](#))

The literal element of the mark consists of Hammer-Schlagen. The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, WRB, Inc., DBA Hammerschlagen, a corporation of Minnesota, having an address of

5865 Neal Ave N / #113

Stillwater, Minnesota 55082

United States

844-942-2548(phone)

XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 028: Equipment sold as a unit for playing parlor games

Use in Commerce: The applicant is using the mark in commerce on or in connection with the identified goods/services. The applicant attaches, or will later submit, one specimen as a JPG/PDF image file showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, regardless of whether the mark itself is in the standard character format or is a stylized or design mark. The specimen image file may be in color, and the image must be in color if color is being claimed as a feature of the mark.

In International Class 028, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 02/26/1999, and first used in commerce at least as early as 02/26/1999, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Picture of the goods for sale, close-up of a plate of the goods for sale, hangtag attached to the goods for sale, and website promoting the sale of the goods..

JPG file(s):[Specimen File1](#)[Specimen File2](#)[Specimen File3](#)**Original PDF file:**[SPE0-I-17421971-202101071 60354656858 _name-websit e.pdf](#)**Converted PDF file(s) (1 page)**[Specimen File1](#)

Webpage URL: stumpdgame.com

Webpage Date of Access: 01/07/2021

Claim of Active Prior Registration(s)

The applicant claims ownership of active prior U.S. Registration Number(s) 2405337, 4804117, 5548112, and others.

Translation

The English translation of HAMMERSCHLAGEN in the mark is HAMMER BEATING.

Use of the mark in another form

The mark was first used anywhere in a different form other than that sought to be registered at least as early as 09/00/1988, and in commerce at least as early as 02/26/1999.

For informational purposes only, applicant's website address is: hammerschlagen.com

The applicant's current Correspondence Information:

WRB, Inc.

PRIMARY EMAIL FOR CORRESPONDENCE: trademark@hammerschlagen.com

SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): NOT PROVIDED

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

A fee payment in the amount of \$250 has been submitted with the application, representing payment for 1 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
 - The applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date on or in connection with the goods/services in the application; and
 - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- ☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- ☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- ☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Jim Martin/ Date: 01/07/2021

Signatory's Name: James B Martin

Signatory's Position: CEO

Signatory's Phone Number: 844-942-2548

Signature method: Signed directly within the form

Payment Sale Number: 90453221

Payment Accounting Date: 01/07/2021

Serial Number: 90453221

Internet Transmission Date: Thu Jan 07 16:45:51 ET 2021

TEAS Stamp: USPTO/FTK-XXX.XXX.X.X-202101071645516795

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Hammer-Schlagen



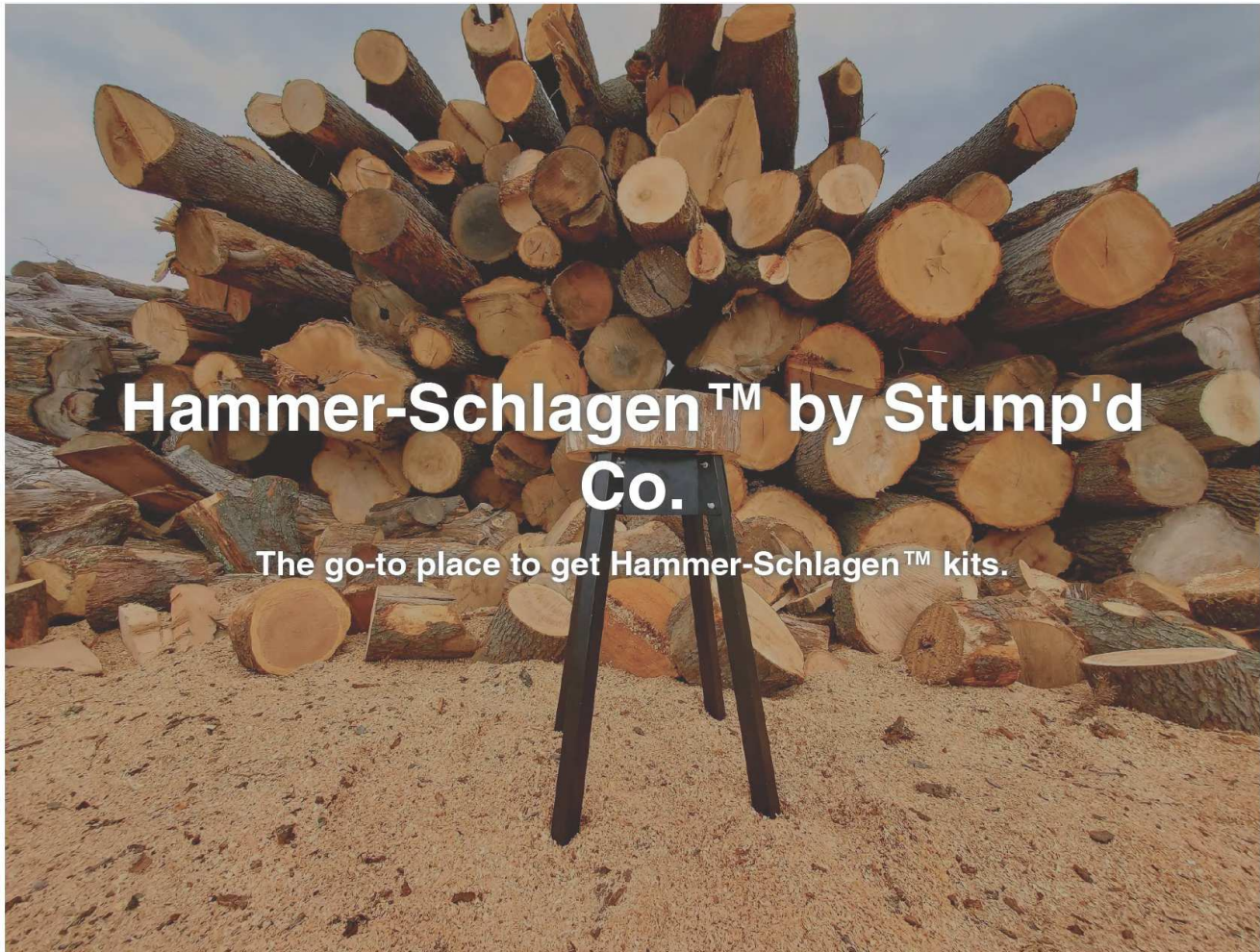






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Catalog



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The thrilling backyard game that is simple, but highly competitive.

Department of State

Division of Corporations

Entity Information

Return to Results

Return to Search

Entity Details

ENTITY NAME: EICHENFELD, LLC	DOS ID: 4613964
FOREIGN LEGAL NAME:	FICTITIOUS NAME:
ENTITY TYPE: DOMESTIC LIMITED LIABILITY COMPANY	DURATION DATE/LATEST DATE OF DISSOLUTION:
SECTIONOF LAW: 203 LLC - LIMITED LIABILITY COMPANY LAW	ENTITY STATUS: ACTIVE
DATE OF INITIAL DOS FILING: 07/29/2014	REASON FOR STATUS:
EFFECTIVE DATE INITIAL FILING: 07/29/2014	INACTIVE DATE:
FOREIGN FORMATION DATE:	STATEMENT STATUS: PAST DUE DATE
COUNTY: GENESEE	NEXT STATEMENT DUE DATE: 07/31/2016
JURISDICTION: NEW YORK, UNITED STATES	NFP CATEGORY:

ENTITY DISPLAY

NAME HISTORY

FILING HISTORY

MERGER HISTORY

ASSUMED NAME HISTORY

Service of Process on the Secretary of State as Agent

The Post Office address to which the Secretary of State shall mail a copy of any process against the corporation served upon the Secretary of State by personal delivery:

Name: MARC JOHNSON
Address: 7126 FISHER ROAD, OAK FIELD, NY, UNITED STATES, 14125

Electronic Service of Process on the Secretary of State as agent: Not Permitted

Chief Executive Officer's Name and Address

Name:
Address:

Principal Executive Office Address

Address:

Registered Agent Name and Address

Name: MARC JOHNSON
Address: 7126 FISHER ROAD, OAK FIELD, NY, 14125

Entity Primary Location Name and Address

Name:
Address:

Farmcorpflag

Is The Entity A Farm Corporation: NO

Stock Information

Share Value	Number Of Shares	Value Per Share
-------------	------------------	-----------------



US009295906B2

(12) **United States Patent**
Johnson et al.

(10) **Patent No.:** **US 9,295,906 B2**
(45) **Date of Patent:** **Mar. 29, 2016**

(54) **COLLECTION OF NAIL HAMMERING
GAME PIECES**

(71) Applicants: **Marc Johnson**, Oakfield, NY (US);
James Betters, Leroy, NY (US); **Daniel
J. Manges**, Oakfield, NY (US)

(72) Inventors: **Marc Johnson**, Oakfield, NY (US);
James Betters, Leroy, NY (US); **Daniel
J. Manges**, Oakfield, NY (US)

(73) Assignee: **Eichenfeld, LLC.**, Oak Field, NY (US)

(*) Notice: Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 113 days.

(21) Appl. No.: **14/326,057**

(22) Filed: **Jul. 8, 2014**

(65) **Prior Publication Data**

US 2016/0008706 A1 Jan. 14, 2016

(51) **Int. Cl.**

A63F 9/00 (2006.01)

A63F 11/00 (2006.01)

(52) **U.S. Cl.**

CPC **A63F 9/00** (2013.01); **A63F 11/0025**
(2013.01); **A63F 2011/0032** (2013.01)

(58) **Field of Classification Search**

CPC A63F 9/00; A63F 11/0025; A63F 2011/0032
USPC 273/440, 445, 446, 459, 461
See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

1,304,540 A * 5/1919 Burrowes A63F 1/06
108/125
1,555,993 A 10/1925 Larson
2,029,434 A * 2/1936 Mitchell A47B 3/12
108/151
2,540,061 A * 1/1951 Szantay A63H 33/00
235/90
2,610,055 A * 9/1952 Goodyear A63D 3/00
273/118 R
2,837,862 A * 6/1958 Cleveland A63H 33/00
446/1
2,871,618 A * 2/1959 Reynolds A63H 33/00
446/1

3,001,843 A * 9/1961 Davis A47B 25/00
108/11
3,608,903 A * 9/1971 Cooper A63F 9/0079
273/236
RE28,293 E * 1/1975 Bustos A47B 57/265
108/107
5,078,404 A * 1/1992 Barillaro A63F 3/00157
273/285
5,092,591 A 3/1992 Tol
5,207,793 A * 5/1993 Brand A63F 9/30
273/440
D349,135 S * 7/1994 Strayer D21/470
6,505,565 B1 * 1/2003 Byung A47B 3/00
108/115
6,662,732 B2 * 12/2003 Birsel A47B 21/00
108/25
6,935,630 B2 * 8/2005 Giegerich A63F 3/0023
273/239
6,997,111 B2 * 2/2006 Giegerich A47B 3/002
108/115
8,006,979 B1 * 8/2011 Lamm A63F 3/00119
273/276
8,795,047 B2 * 8/2014 Tsai A63F 9/0096
273/446

OTHER PUBLICATIONS

Hammer Time! Mike Siemsen's School of Woodworking, submitted
May 19, 2012 [online], [retrieved on Dec. 28, 2015]. Retrieved from
the Internet <URL: <http://schoolofwood.com/node/68>>.*

* cited by examiner

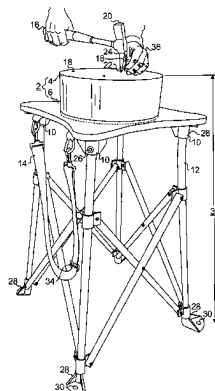
Primary Examiner — Raleigh W Chiu

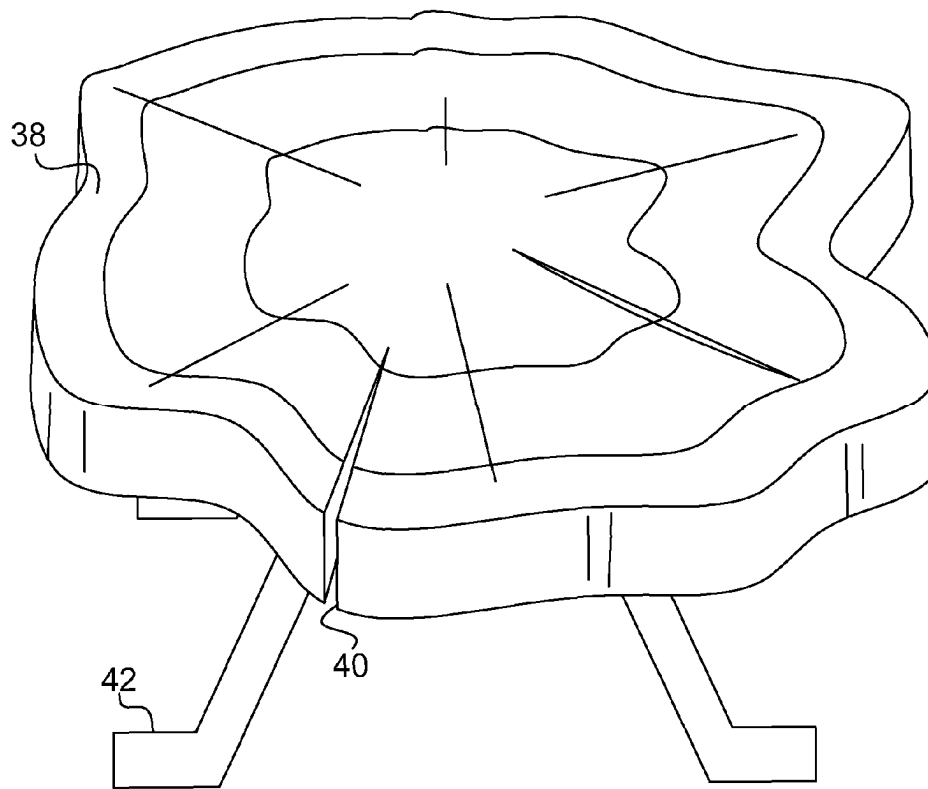
(74) *Attorney, Agent, or Firm* — Tracy Jong Law Firm;
Tracy P. Jong; Cheng Ning Jong

(57) **ABSTRACT**

A collection of game pieces including a block and a support
tray. The block includes a top surface, a first width and a
thickness. The support tray includes a top surface, a bottom
surface, a second width, a depressed portion on the surface
and the support tray is adapted to removably receive the block
centrally on the top surface. The ratio of the first width and the
second width ranges from about 6:7 to about 1:2 such that a
flange of the support tray is formed. The block is configured
to receive a plurality of nails driven into it using a striking tool
and if the striking tool accidentally misses the block while
used in driving a nail into the block, the flange is used to arrest
the striking motion of the striking tool.

18 Claims, 9 Drawing Sheets





PRIOR ART

FIG. 1

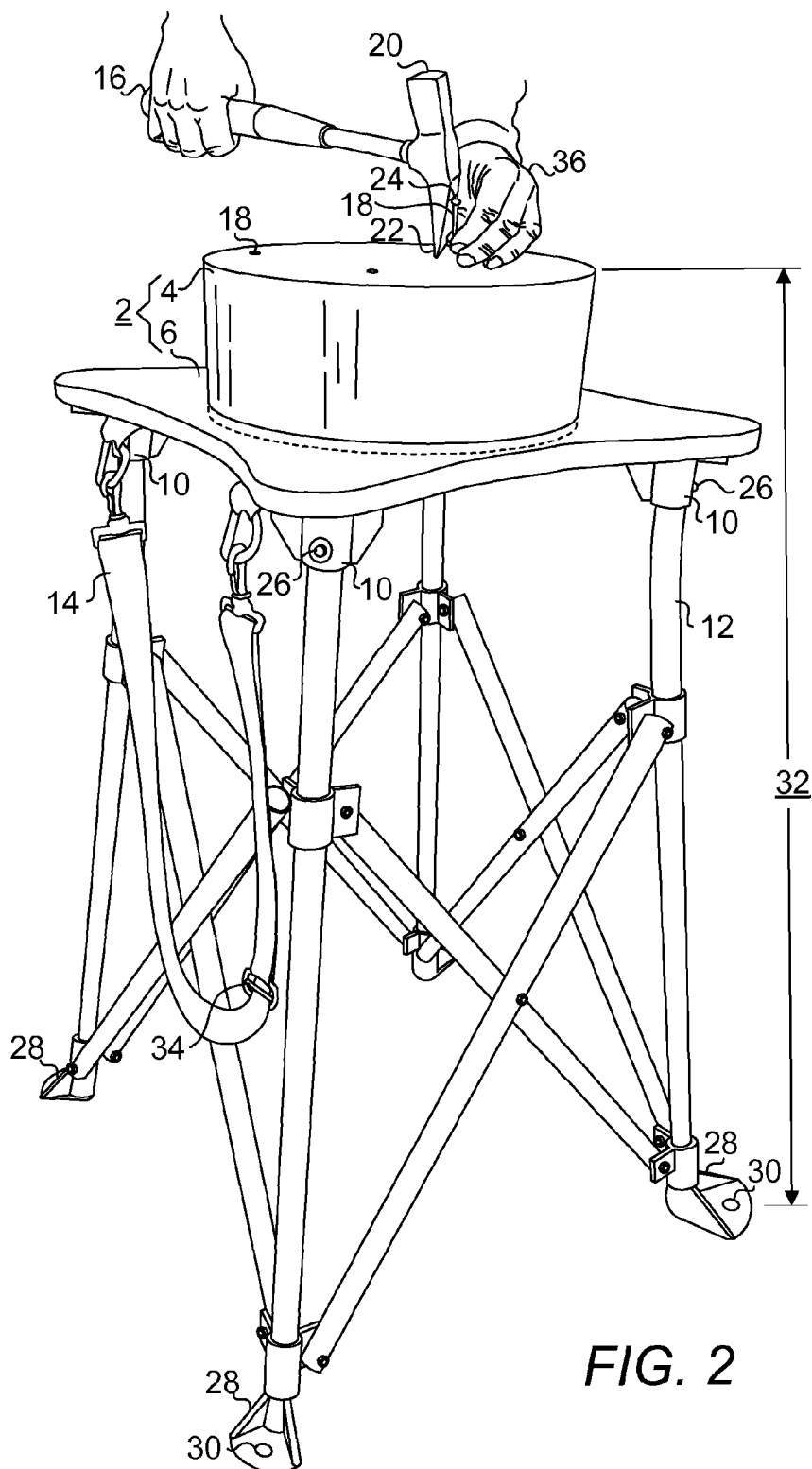
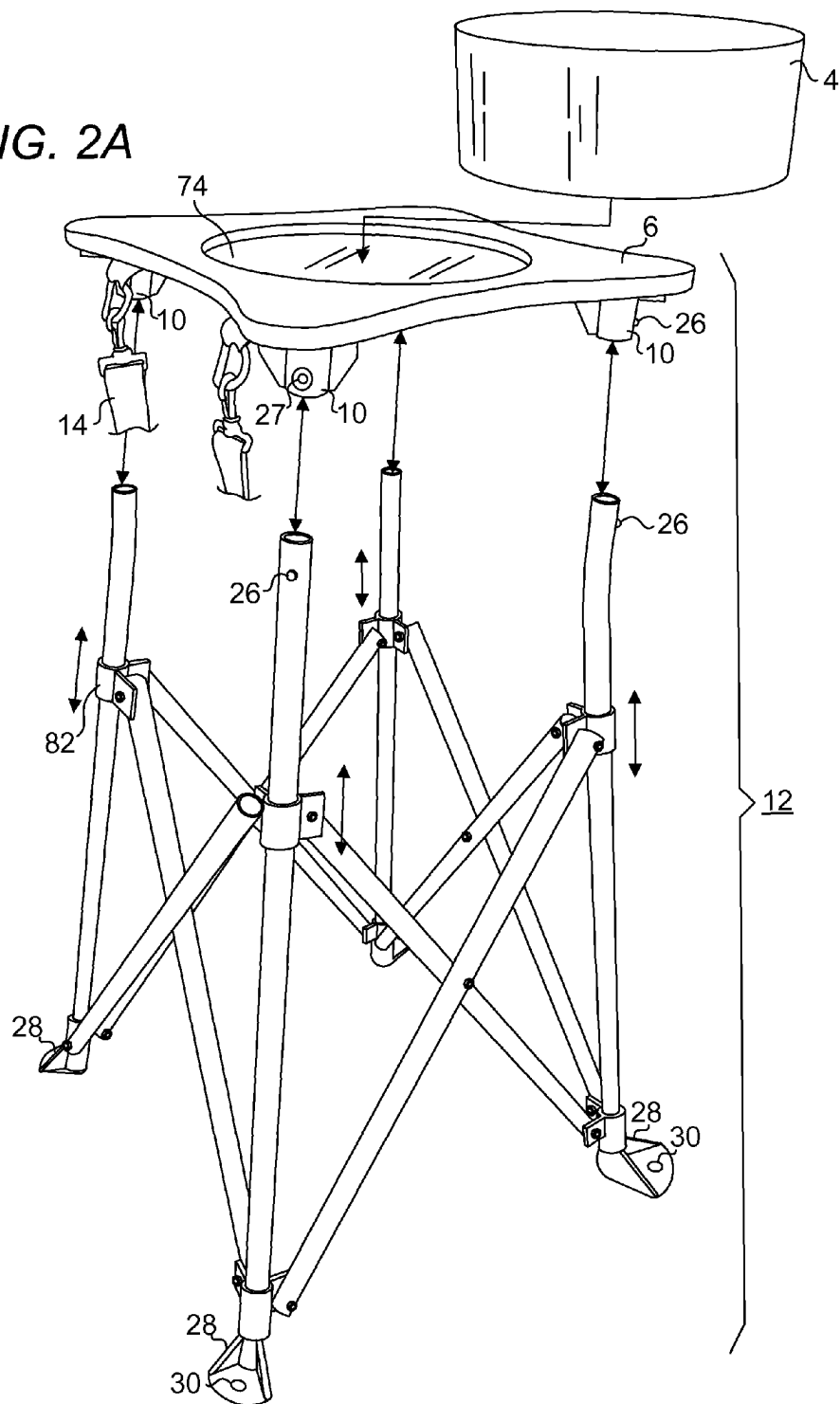
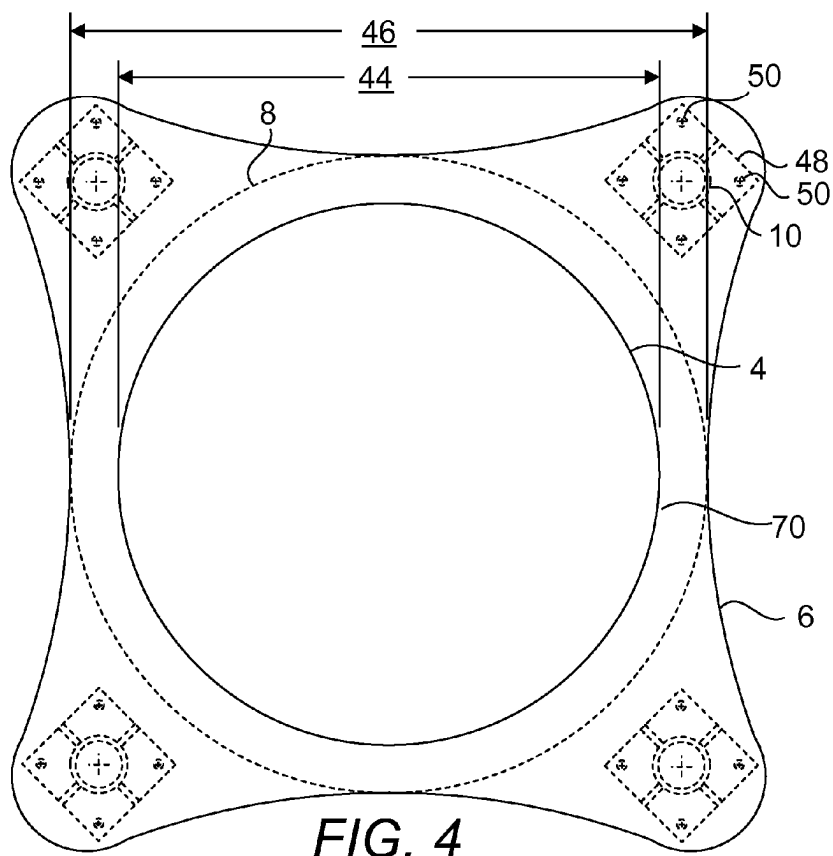
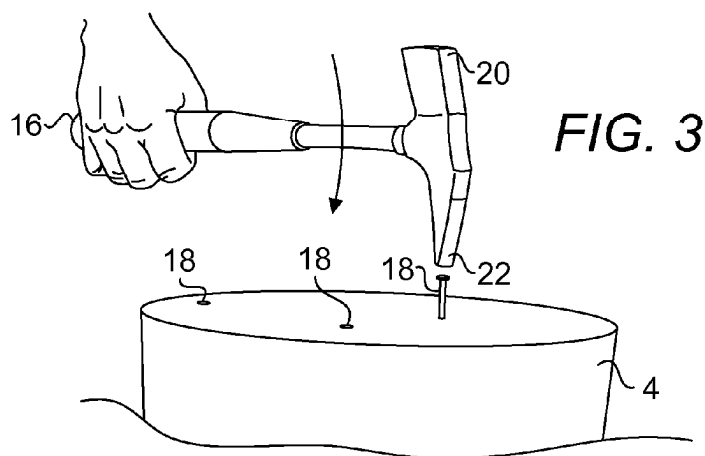
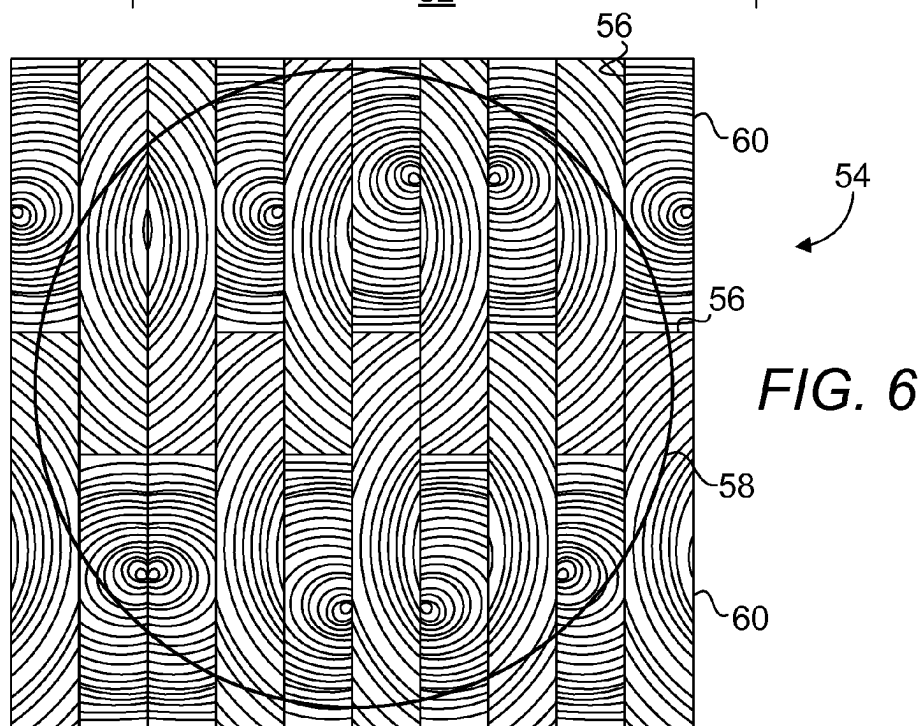
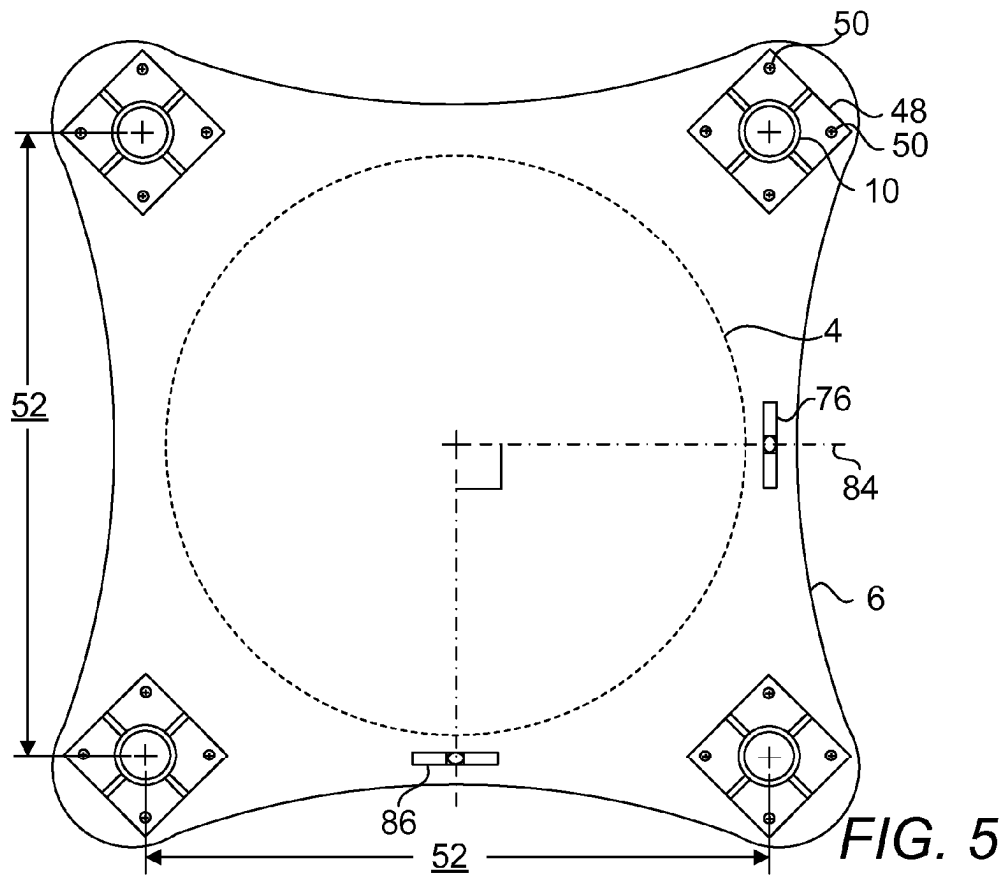


FIG. 2A







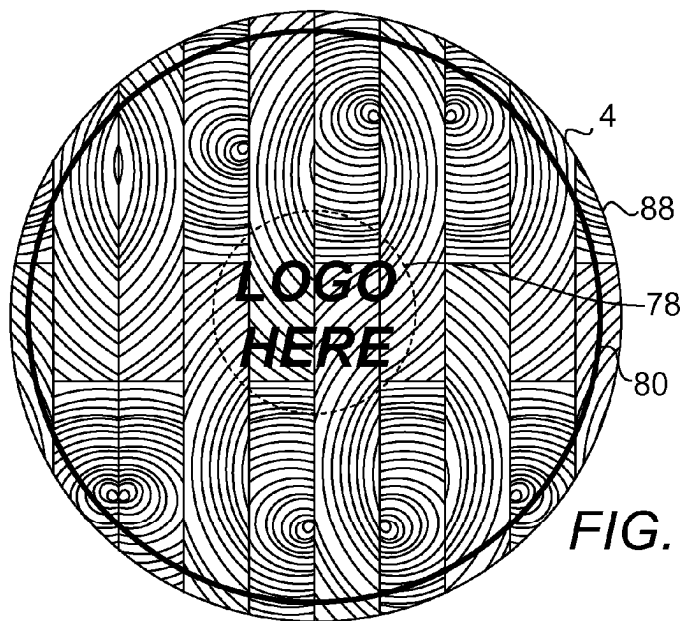


FIG. 7

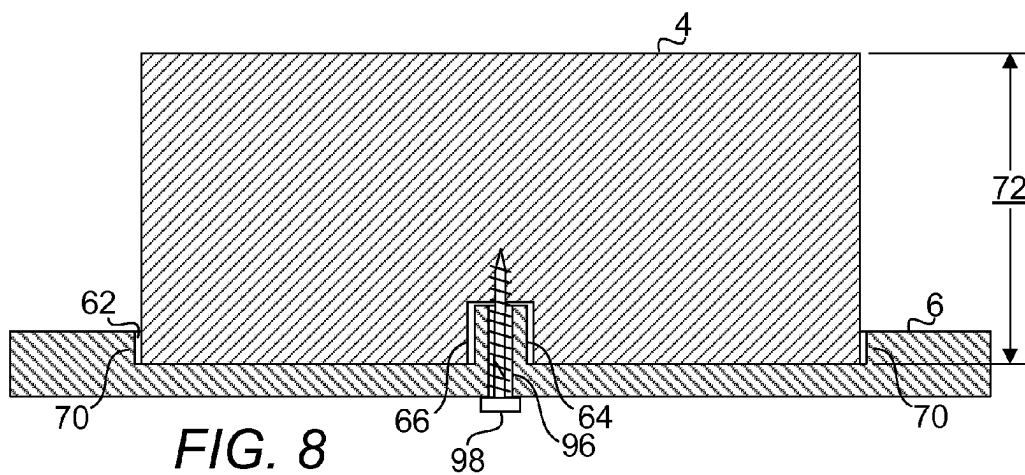
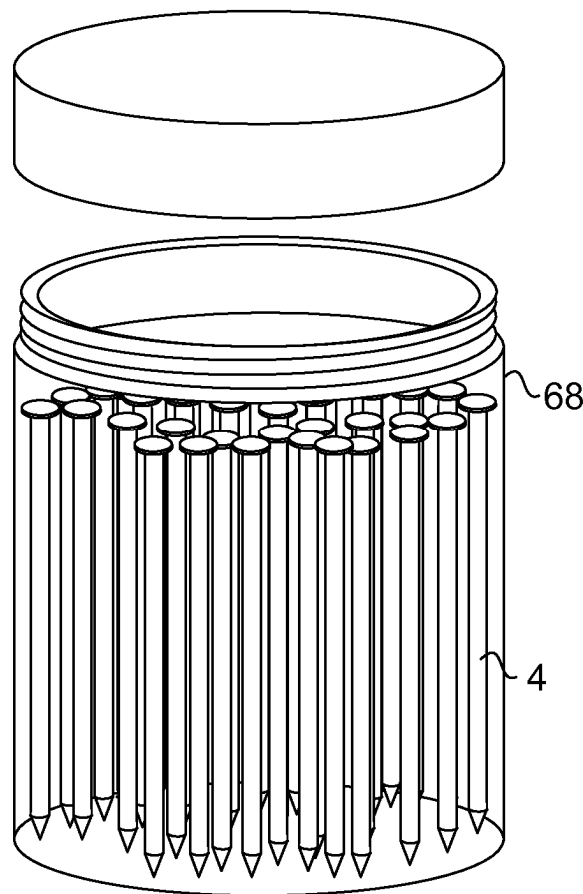
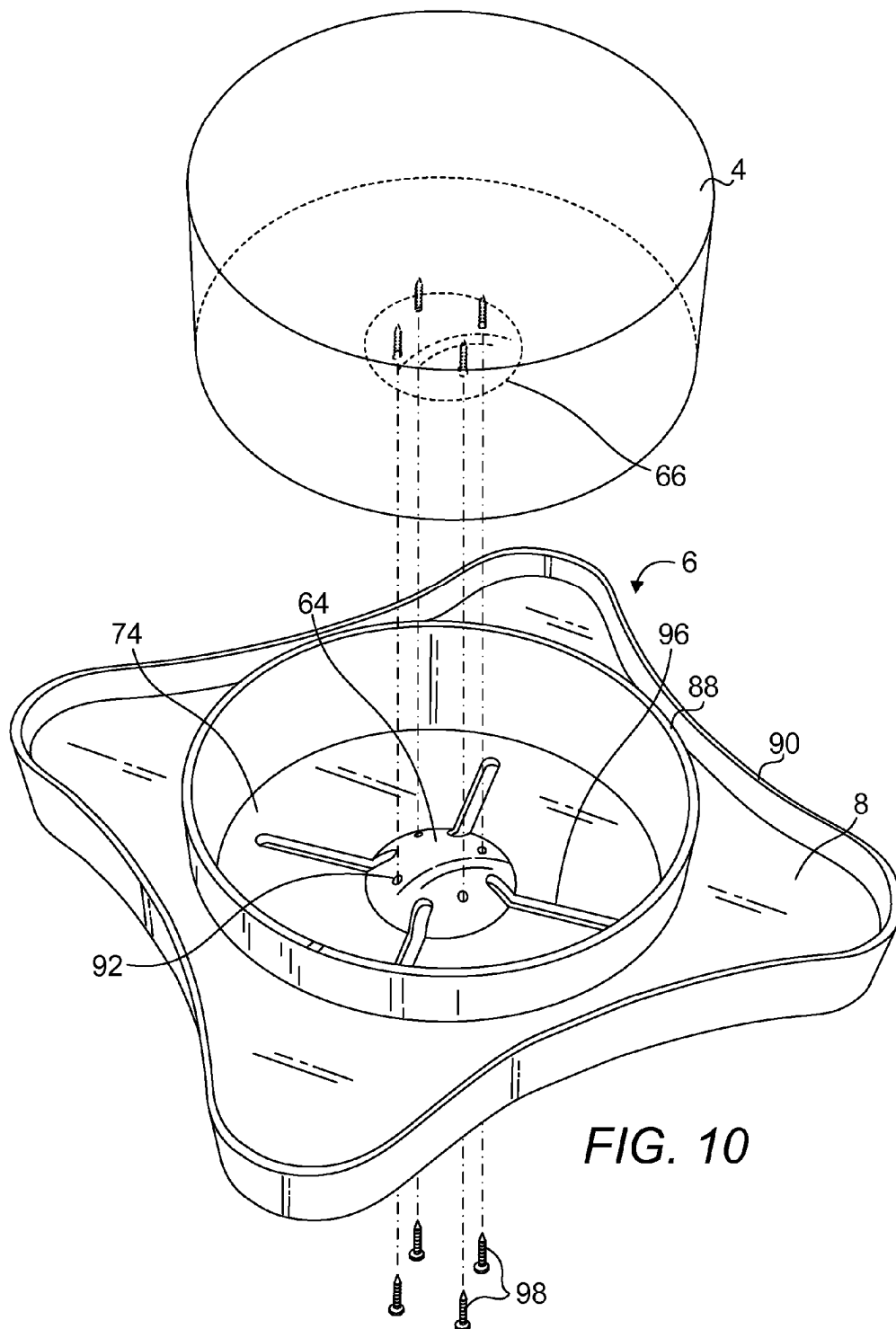
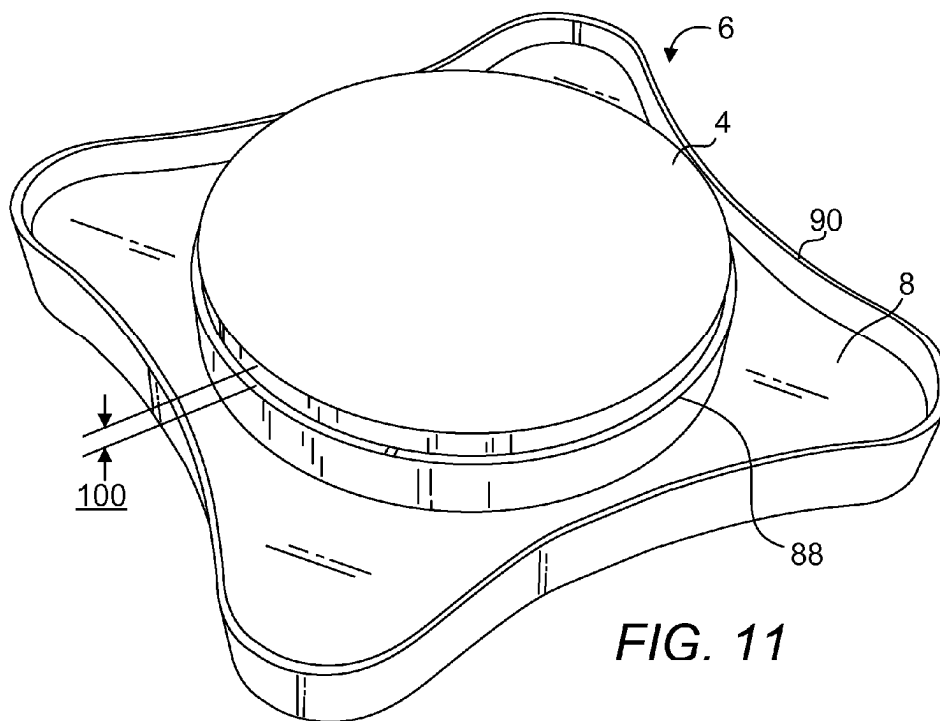


FIG. 8







1

COLLECTION OF NAIL HAMMERING GAME PIECES

BACKGROUND OF THE INVENTION

1. The Field of the Invention

The present invention is directed generally to a collection of nail hammering game pieces. More specifically, the present invention is directed to a collection of portable and easily transportable and set up Hammerschlagen or Nagelspielen or nail hammering game pieces.

2. Background Art

The object of the nail hammering game is for two or more players to drive nails into a tree stump. The fewer the number of strokes it takes to drive a nail into the stump, the higher the score will be. There are many different ways to play and many different sets of rules. However, the essence of the game is to hammer a nail into the tree stump.

According to the website <http://www.salinemainstreet.org/2012/09/08/new-event-at-oktoberfest/>, Hammerschlagen or Nagelspielen is defined as follows:

“Hammer-Schlagen (the “Striking Hammer” or “Hammer-Striking”) is a brand of the German game Nailspielen (the “Nail Game” or “Playing With Nails”) which reportedly dates to the first Oktoberfest in 1810. Shortly after opening in 1966, the first instance of Nailspielen in the United States was reportedly found at the Gasthaus Bavarian Hunter in Stillwater, Minn. It was played there in the traditional fashion until the restaurant owner’s father branded the Nailspielen service[1] and vested the brand of Hammer-Schlagen and the related intellectual property in WRB, Inc.[2]

Both Hammer-Schlagen and Nailspielen are essentially the same. Nailspielen is played with an axe while Hammer-schlagen is played with a hammer.

The game is typically played with a Cross-peen hammer or blacksmith’s hammer and a large (24-36”) cross-section of a soft hardwood. Cottonwood is suitably soft for this game. The hammer must have a wedge-shaped (but not sharp) end on it and should be at least 2.5 pounds.

The log is set up waist high with the flat sides facing the floor and ceiling. A bright common nail (12/16d) is driven about a half inch into the wood in front of each player. Each player’s turn consists of setting the wedge-end of the hammer on the log next to their nail and taking a single swing at it. The swing must be done in a smooth up and down motion. Male players must use one hand. Female players may use both hands.

Sound easy? It is more challenging than you think! Frequently, a player will bend their nail in such a way as to make driving it further nearly impossible. In this case, the player may use their turn to make a single-motion swing at the nail from the side in an attempt to straighten the nail. You are not required to stand in the same place for the entire game. Often it is necessary to switch sides of the log to get a better angle on your nail.”

One disadvantage associated with conventional game pieces lies in the size of a stump used to play the game as it often is too heavy and bulky to transport. Players or organizers of such game are faced with several difficulties which have prevented more popular acceptance of such game. First, suitably sized and conditioned wood blocks must be selected from non-purposely cut tree trunks. The selection process may be complicated by factors such as the variety of tree the blocks have originated from, the condition of the blocks due to weathering and health conditions of the tree from which the blocks have originated from, the quality of the cuts as the top

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surface of a slice may not be substantially parallel with the bottom surface of the slice, the size and weight of the blocks, and the like. Then, once a block has been selected, there is the issue of supporting the block which is usually disposed and supported outdoors. The support preferably does not present a barrier (especially to the toes) to a user approaching the block but yet should be sufficiently sturdy such that any conceivably placed weight, e.g., due to the impact created by a striking tool while nail striking is attempted, does not cause the block to fall off of the support.

Thus, there arises a need for nail hammering game pieces which are easily transportable and ones which solve all of the problems associated with procuring, transporting, deploying, gathering and using conventional nail hammering game pieces.

SUMMARY OF THE INVENTION

The present invention is directed toward a collection of game pieces including a block and a support tray. The block includes a top surface, a first width and a thickness. The support tray includes a top surface, a bottom surface, a second width, a depressed portion on the surface and the support tray is adapted to removably receive the block centrally on the top surface. The ratio of the first width and the second width preferably ranges from about 6:7 to about 1:2 such that a flange of the support tray is formed. The block is configured to receive a plurality of nails driven into it using a striking tool and if the striking tool accidentally misses the block while used in driving a nail into the block, the flange is used to arrest the striking motion of the striking tool.

In one embodiment, at least one leg socket is adapted to the bottom surface. A leg structure is removably connected to the at least one leg socket to support the support tray.

In one embodiment, the leg structure is collapsible to facilitate transport of the leg structure.

In one embodiment, the leg structure includes four legs capable of being erected in a rectangular stance. Each of the four legs includes a top end and a bottom end.

In one embodiment, each of the four legs includes a foot disposed on the bottom end of the leg.

In one embodiment, each of the four legs further includes an aperture disposed on the foot of the leg, where the aperture is adapted to receive a stake.

In one embodiment, the block includes a material having a density of from about 20 to about 40 lbs/ft³.

In one embodiment, the block includes a material having a Janka hardness of from about 350 to about 550.

The material can include natural wood, a glulam, Medium-Density Fiberboard (MDF) and Urethane Foam Board.

In one embodiment, the top surface of the support tray further includes a depressed portion adapted to form a fringe to secure the block.

In one embodiment, the top surface of the support tray further includes at least one key configured to be coupled to a matching slot of the block to prevent movement of the block relative to the support tray and to prevent use of an unqualified block.

In one embodiment, the game pieces further include a carrying strap having two ends, each end adapted to a portion of the support tray to facilitate transport of the support tray.

In one embodiment, the size of each of the plurality of nails is about 10 d.

In one embodiment, the thickness of the block ranges from about 4 inches to about 6 inches and the first width ranges from about 10 inches to about 16 inches.

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In one embodiment, the top surface of the block further includes a marking designation disposed at a pre-determined distance from an edge of the block.

In one embodiment, the game pieces further include at least one level for indicating inclination of the support tray about one axis of rotation.

Accordingly, it is a primary object of the present invention to provide portable nail hammering game pieces.

It is another object of the present invention to provide a portable playing surface and a base assembly that are durable and easy to assemble and disassemble.

It is another object of the present invention to provide a collection of portable nail hammering game pieces that is aesthetically pleasing and requires only very few parts.

Whereas there may be many embodiments of the present invention, each embodiment may meet one or more of the foregoing recited objects in any combination. It is not intended that each embodiment will necessarily meet each objective. Thus, having broadly outlined the more important features of the present invention in order that the detailed description thereof may be better understood, and that the present contribution to the art may be better appreciated, there are, of course, additional features of the present invention that will be described herein and will form a part of the subject matter of this specification.

BRIEF DESCRIPTION OF THE DRAWINGS

In order that the manner in which the above-recited and other advantages and objects of the invention are obtained, a more particular description of the invention briefly described above will be rendered by reference to specific embodiments thereof which are illustrated in the appended drawings. Understanding that these drawings depict only typical embodiments of the invention and are not therefore to be considered to be limiting of its scope, the invention will be described and explained with additional specificity and detail through the use of the accompanying drawings in which:

FIG. 1 depicts a conventional wood block supported on a support structure where the wood block is useful for receiving nails in a nail hammering game.

FIG. 2 is a partial top perspective partially transparent view of the present nail hammering game pieces, depicting a user checking the level to which a nail must be inserted in the block before striking of the nail as a matter of game play can start.

FIG. 2A is a partial top perspective partially transparent exploded view of the present nail hammering game pieces, depicting the interfaces between a block, its support tray and the leg structure connected to the support tray.

FIG. 3 is a top perspective view of a present block, depicting a user striking a nail into a block.

FIG. 4 is a partially transparent partial top orthogonal view of a present block disposed on a support tray.

FIG. 5 is a partially transparent bottom orthogonal view of a present support tray.

FIG. 6 depicts a glue laminated timber (glulam) block useful to be made into a material suitable to receive nails for the nail hammering game.

FIG. 7 depicts a glulam block having been cut into shape for use in one embodiment of the present game pieces.

FIG. 8 is a cross-sectional orthogonal view of a present tray and its support tray.

FIG. 9 depicts an example of the nails used in conjunction with the present game pieces.

FIG. 10 is a partially transparent top perspective view of one embodiment of the present block and its corresponding support tray.

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FIG. 11 is a top perspective view of the embodiment disclosed in FIG. 10 with the block disposed in a seated and secured position.

PARTS LIST

2—nail hammering game pieces
 4—block
 6—support tray
 8—flange
 10—leg socket
 12—leg structure
 14—carrying strap
 16—striking tool or hammer
 18—nail
 20—head of hammer
 22—tail of hammer
 24—measuring mark disposed on hammer tail
 26—spring loaded button
 27—aperture
 28—foot of leg
 30—aperture of foot
 32—height at which block is disposed
 34—strap length adjustment buckle
 36—user
 38—sliced natural wood block
 40—defects, e.g., cracks, etc.
 42—support structure
 44—width of block
 46—minimum width of flange
 48—leg socket securing plate
 50—fastener
 52—distance between adjacent leg sockets
 54—intermediate block
 56—seam
 58—outline of finished block
 60—aggregate strip
 62—play between block and support tray
 64—key
 66—matching slot
 68—container
 70—fringe
 72—thickness of block
 74—depressed portion of support tray
 76—level
 78—marking disposed on top surface on block
 80—marking disposed on top surface of block, designating edge of block
 82—slideable anchor
 84—axis of rotation about a first axis
 86—axis of rotation about a second axis
 88—wall around depressed portion
 90—wall around flange
 92—aperture
 94—slot
 96—through hole
 98—screw
 100—distance between top end of wall around depressed portion and top surface of seated block

PARTICULAR ADVANTAGES OF THE INVENTION

The present game pieces include a block having consistent density and hardness, making nail driving more predictable and the success of nail driving dependent on skill rather than luck.

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The present game pieces include a block having a width that is narrower than the support tray on which the block is supported, leaving a flange around the block to serve as an edge to prevent misses to continue on their paths to cause inadvertent harm to the user and properties. In one embodiment, a fringe is formed around the block as the block is disposed in a depressed portion of the support tray. Such fringe contains any inadvertently separated edges of the block from leaving the support tray and hitting bystanders or the user.

The present game pieces are capable of being assembled and disassembled with ease. As such, they are easily transportable. The block is configured in a size convenient to be transported but yet have sufficient surface for nail driving. The block can be disposed securely atop the support tray. The leg structure is detachable from the support tray such that the support tray can be transported separately from the leg structure. The leg structure is erectable for use but collapsible for transport and storage. Therefore the use of the present game pieces is encouraged due to the ease of transporting, assembling, disassembling and storing such game pieces. This is in direct contrast to the use of a conventional wood block and its support structure which are likely larger, heavier, bulkier and less stable when the wood block is supported on a conventional support structure.

DETAILED DESCRIPTION OF A PREFERRED EMBODIMENT

The term "about" is used herein to mean approximately, roughly, around, or in the region of. When the term "about" is used in conjunction with a numerical range, it modifies that range by extending the boundaries above and below the numerical values set forth. In general, the term "about" is used herein to modify a numerical value above and below the stated value by a variance of 20 percent up or down (higher or lower).

The present game pieces are provided in a manner that they can be easily provided, managed or transported by a single individual. They include a block made in a size easily transportable by one person, a support tray having a depression for receiving the block, a leg structure for supporting the support tray. In order to use the present games pieces, a supply of suitably selected nails and a hammer are also necessary. In one embodiment, the top surface of the support tray may be flat, i.e., without a depression. In this embodiment, a raised rim adapted to surround and receive a block may be provided.

FIG. 1 depicts a conventional wood block **38** supported on a support structure **42** where the wood block **38** is useful for receiving nails in a nail hammering game. Sliced natural wood blocks **38** that result from normal wood/tree cutting are used. As such, the shape of naturally occurring wood slices or blocks can be unpredictable, inconsistent and subject to the choice of their users. The surfaces of the blocks may be fraught with scars and defects **40** which make the quality of the surfaces inconsistent and not only limiting the amount of usable surface areas but also making the game more dependent on luck as opposed to skill as the choice of nail placements can mean whether a nail can be successfully driven into the block.

FIG. 2 is a partial top perspective partially transparent view of the present nail hammering game pieces **2**, depicting a user **36** checking the level to which a nail must be inserted in the block before striking of the nail **18** as a matter of game play can start. A measuring mark **24** is conveniently provided on the hammer tail and as the hammer tail is disposed on the block with the haft of hammer held sufficiently level, the

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mark shows the required position of the head of the nail before the nail should be struck (or before the count of the number of strikes should begin). In order to insert the nail to appropriate height in the block, the nail **18** is tapped lightly using either the head or the tail of the hammer. Several measurements may be taken before the nail **18** is eventually placed in a satisfactory height for a turn to begin. The present invention includes a collection of game pieces **2** including a block **4** and a support tray **6**. As the block **4** is provided as a separate element and removable from the support tray **6**, a used block can be easily replaced with a new one without having to dispose of the otherwise usable support tray.

In use, the block **4** is configured to receive a plurality of nails **18** driven into it using a striking tool **16** and if the striking tool **16** accidentally misses the block **4** while used in driving a nail into the block, the flange **8** is used to arrest the striking motion of the striking tool **16**. A cross peen hammer, blacksmith's hammer, mason's hammer, framing hammer are found to be suitable striking tool **16** as each such hammer has a blade-like peen at right angles to the haft of the hammer. A blade-like peen poses significant challenges to a user as the striking surface has an area that is not much larger than the head of a nail, causing only the most accurate strikes to actually contact the nail to drive it deeper into a block. All suitable hammers have one feature in common, i.e., the hammer tapers from a head **20** to a reduced portion which becomes the tail **22**. It is necessary that the hammer be sufficiently heavy to drive a nail but not too large that it could damage the block from striking it too hard. A 20-ounce mason hammer appears to work the best using the tail. Although less desirable, the head of a hammer may alternatively be used for novice play if agreed upon by all participants.

It shall be noted that the support tray **6** further includes four leg sockets **10** adapted to the bottom surface of the support tray **6**. Although a lesser number of leg sockets may suffice, the use of four leg sockets provides receiving points for four legs that are disposed at four corners, resulting in a wide stance for securing legs to provide stability. If a smaller number of leg sockets is used, a smaller number but matching number of legs may be used. In the embodiment shown, a leg structure is removably connected to the leg sockets to support the support tray. The leg structure is preferably easily collapsible to facilitate transport of the leg structure and includes four legs capable of being erected in a rectangular stance easily. Each pair of adjacent legs represents a face of the rectangular stance and includes a scissors type structure that allows the pair to be disposed in its erected position when the scissors type structure is disposed in its fully erected position and collapsed position when the scissors type structure is disposed in its fully collapsed position. The leg structure is preferably portable and lightweight, e.g., constructed from a lightweight material, e.g., steel, aluminum or plastic tubing and wooden frame. A notable feature of the leg structure has to deal with its large "feet" that prevent such stand from sinking into soft ground during use due to hammering forces exerted on the block. The area encompassed by the stance of the legs is preferably larger than the top horizontally disposed surface area of the block or the support tray to prevent or reduce the likelihood of erected game pieces from tipping over by lowering the center of gravity of the erected game pieces. The ground contact area of each foot **28** is preferably sufficiently large to prevent sinking of the feet **28** into soft ground. Preferably, when a nail is being driven into a block, the pressure experienced in each foot **28** does not exceed about 15 lbs/in² (psi). Suitably large feet aid in distributing the weights experienced at the feet and prevent penetration of the feet into the ground on which the legs are disposed. There is

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further provided at least one aperture **30** in each foot **28** for receiving a stake. Staking down of the legs becomes important to secure the game pieces when the game pieces are erected over uneven and/or soft ground.

In one embodiment, the block includes a material having a density of from about 20 to about 40 lbs/ft³. In one embodiment, the block includes a material having a Janka hardness of from about 350 to about 550. In a preferred embodiment, the block includes a material having a Janka hardness of about 400. Suitably hard materials are important in that the materials are required not only to withstand penetration of nails placed densely together but also repeated misses in hammering the nails. Some spots on a block can potentially experience several blows over the lifetime of the block. In one embodiment, the height of the leg structure is configured such that the top surface of the block is disposed at a height **32** of about 36 inches of a surface upon which the leg structure is disposed.

FIG. 2A is a partial top perspective partially transparent exploded view of the present nail hammering game pieces, depicting the interfaces between a block **4**, its support tray **6** and the leg structure connected to the support tray **6**. In erecting the leg structure, the legs are pulled apart, causing the slideable anchors **82** of each pair of the scissors type structure to lower as the scissors type structure spread apart. The leg structure may be placed on a surface including, but not limited to blacktop, concrete, gravel, dirt, grass, carpet, linoleum, frozen lake and snow. Upon erecting the leg structure **12**, a support tray **6** is adapted to the leg structure **12** by first aligning each leg socket **10** with the top end of a leg. In the embodiment shown, the top end of each leg is equipped with a spring loaded button **26** which when compressed, collapses to form a smaller overall diameter at the top end of the leg. This reduced diameter enables the insertion of the top end of the leg into a corresponding socket **10** on the support tray **6**. The leg will be inserted to a point when the button **26** becomes disposed at a position to coincide with a matching aperture **27** disposed on the socket **10** to receive the button **26**. Upon reaching this position, the resilience of the spring loaded button **26** now causes it to extend through the aperture **27**, thereby locking the leg in position. In order to remove the leg, the button **26** is simply depressed such that the overall diameter of the leg now becomes smaller than the diameter of the socket **10**. The leg can then be pulled from the socket **10** and eventually separated from the socket **10**. When a support tray **6** has been set up, a block **4** may then be dropped onto the top surface of the support tray **6**. In the embodiment shown, a depressed portion **74** is provided to securely receive the block **4**. In collapsing the leg structure, the block **4** is first removed from the support tray **6**, followed by the removal of the support tray **6** from the leg structure. When all legs have been detached from their corresponding sockets **10**, the legs can now be brought together, causing the slideable anchors **82** to rise in order to accommodate the collapse of the leg structure. It shall be noted that, throughout the entire operations of assembling and disassembling, no external tools are needed. The present game pieces can be set up by a single individual, removing the need for a second individual or third, as in the prior art scenarios, in carrying and setting a large block on a support structure.

Referring back to FIG. 2, it shall be noted that the present game pieces further include a carrying strap **14** having two ends, each end adapted to a portion of the support tray **6** to facilitate the transport of the support tray **6**. In yet another embodiment not shown, a handle is used in place of the carrying strap **14**. In the embodiment shown, the carrying

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strap **14** further includes an adjustment buckle **34** which enables length adjustment of the carrying strap **14**.

FIG. 3 is a top perspective view of a present block **4**, depicting a user striking a nail **18** into a block **4**. It shall be noted that the tail **22** of the hammer is used in striking the nail **18** at its head. The head **20** of the hammer is typically not used as it is not sufficiently challenging to use it to strike a nail with the head **20**. It shall be noted that two nails **18** have already been struck and now embedded in the block **4** with only the heads of the nails exposed.

FIG. 4 is a partially transparent partial top orthogonal view of a present block disposed on a support tray. The block **4** includes a width **44** and a thickness. The width **44** can range from about 10 inches to about 16 inches but preferably about 12 inches. The support tray **6** includes a top surface, a bottom surface, a width **46**, a depressed portion on the surface and the support tray **6** is adapted to removably receive the block **4** on the top surface. The ratio of the block width and the support tray width ranges from about 6:7 to about 1:2 such that a sufficiently prominent flange **8** of the support tray is formed. The block **4** is seated in the depressed portion such that the flange **8** also forms a fringe **70** to contain the block **4**. As the support tray **6** extends beyond the diametric periphery of the block, the flange aids in stopping a hammer from continuing to be swung downwardly in the event where a user misses, or glances the outer edge of the playing surface of the block. When the block is set in the depressed portion, a fringe is also formed around a portion of the side wall of the block in the vicinity of the bottom of block. Without the fringe, cracked edges can cause pieces of materials to be separated from the block and hit bystanders or the user. It shall be noted that the flange extends outwardly at four corners to provide a solid base for the attachment of leg sockets **10** via their respective leg socket securing plates **48**.

FIG. 5 is a partially transparent bottom orthogonal view of a present support tray. In one embodiment, the distance **52** between adjacent leg sockets is preferably about 13 inches. Each leg socket **10** includes a socket securing plate **48** which is secured to the bottom surface of the support tray **6** using a plurality of fasteners **50**. In the embodiment shown, two levels **76** are provided and mounted at substantially right angle to one another on the bottom surface of the support tray **6**, each disposed about an axis of rotation **84**, **86** of the support tray **6** to indicate an inclination with respect to its corresponding axis of rotation **84**, **86**. Each level **76** may alternatively be mounted on a side surface of the support tray **6**, still away from potential strike locations of missed strikes. Players may use at least one of the levels as a guide to choose the ground on which the game pieces are set up. In making the game safer to play, the top surface of the block is preferably not only level with the ground but also level with a horizontal plane.

FIG. 6 depicts a glulam block **54** useful to be made into a material suitable to receive nails for the nail hammering game. As the aggregate strips **60** are used for forming glulam come in rectangular blocks, the resulting glulam block is also rectangular. It shall be noted that seams **56** are formed as a result but they do not present problems in receiving nails. Rectangular blocks may readily be used to receive nails. However, in keeping with the tradition of the nail hammering game, rounded (or cylindrical) blocks are used as shown in FIG. 7. A rounded block may be cut out of the rectangular block depicted in FIG. 6 along outline **58**. FIG. 7 depicts a glulam block having been cut into shape for use in one embodiment of the present game pieces. One advantage of the present block over a conventional block, e.g., naturally occurring block/trunk slice lies in the integrity, consistency and durability of the present block as compared to conventional

blocks. Many conventional blocks tend to crack due to weathering as it is impractical to move conventional blocks to a shelter as the conventional blocks typically weigh significantly more than the present block. The size of the present block is suitably configured such that it offers a sufficiently large area for game play while being easily transportable. The grain direction of the present block is favorably aligned with the direction in which nails are to be driven into the block such that the block remains structurally intact and does not split prematurely despite repeated use. Suitable glulam block materials include spruce, hem fir, cottonwood, pine, basswood, larch or any type of wood having a density that falls within a density range of from about 20 to about 40 lbs/ft³. If a block that comes in a single unit is preferred, a naturally occurring tree trunk slice is also suitable. However, the naturally occurring trunk slice will need to be larger in diameter than the final size of the block used in the present game pieces as the naturally occurring trunk slice is "turned" to a suitable size and shape for snug fit in the depression of the support tray.

Any wood slices or pieces used for the present block are preferably kiln dried for dimensional stability and sealed to prevent splitting. In one embodiment, the top surface of the block includes a marking 78, e.g., a logo or other branding information, e.g., website address, Quick Response (QR) code, etc. In one embodiment, the logo is laser etched in the center. In one embodiment, there is also disposed a marking 80 designating a "no play" area as it is too close to the edge of the block as it is high likely that a player will miss the playing surface while attempting to strike the nail. In one embodiment, this marking is a line etched at an offset of about 0.5 inch from the side wall of the block 4. In one embodiment, as the bottom surface of the block includes a depressed portion 66 and the support tray includes a raised portion 64, the designation of "no play" area at the centrally placed marking 78 steers players away from playing in this area. Also, the nail has a tendency to split the block out along the side wall of the block 4.

The choice of block material can be, but not limited to natural wood, glulam, Medium-Density Fiberboard (MDF) and Urethane Foam Board. If glulam is used, suitable grain orientation is important as a nail is more easily driven into the block consistently and driven into the block without causing splitting of the block if the grain is aligned with the direction in which the nail is driven into the block. In this case, the grain is preferably aligned vertically. Aggregate strips 60 of suitable sizes, e.g., rectangular blocks of widths ranging from about 1 inch to about 3 inches, are preferable to lower the chance that a defective piece will take up a good percentage of the block surface. Upon assembling and gluing aggregate strips 60 together and turning the block into its final shape, a sealant may be applied to outer surfaces of the properly shaped block to further enhance the binding of the aggregate strips 60. In general, solid and laminated materials, with or without specific grain orientation, may be used. Such materials provide consistent resistance to nail hammering although the appearance is considered less attractive than glulam or natural-looking wood surfaces.

FIG. 8 is a cross-sectional orthogonal view of a present tray and its support tray. In one embodiment, the block ranges from about 4 to about 6 inches thick 72. Applicants discovered that blocks 4 thicker than 6 inches are unnecessarily hefty and exert excessive weight for transport. Applicants also discovered that blocks thinner than 4 inches tend to disintegrate when the block is densely inserted with nails. In one embodiment, the support tray 6 further includes at least one key 64 disposed on a portion of the top surface of the

depressed portion 74 of the support tray 6. This key 64 is configured to be coupled to a matching slot 66 of the block 4 to prevent movement of the block 4 relative to the support tray 6 and to prevent use of an unqualified block as it may not have the desirable properties, hardness or density, as disclosed elsewhere herein. Sufficient play 62 is preferably provided to ensure easy mounting and removal of the block in the depressed portion of the support tray 6. The play 62 shall however not be too large as to accommodate the striking end of a hammer or the hammer may become stuck between the support tray and the block. The use of key-slot matching portions also enhances the grip of the support tray 6 on the block 4, further securing the block 4. In the embodiment shown, the block 4 is further secured with a fastener, e.g., screw 98. In this case, a through hole 96 that is centrally disposed within the key 64 enables penetration of the screw 98 from the bottom of the support tray 6 to engage the block 4 within the slot. The block 4 may be delivered to an end user with the block already secured with one or more screws 96 or the user may be required to fasten the screw before use. The block 4 is not required to be separated from the support tray 6 after use unless if the block 4 has been fully consumed and that it needs to be replaced.

FIG. 9 depicts an example of the nails used in conjunction with the present game pieces. Nails 18 are preferably housed in a container 68 to avoid spilling and to encourage proper accounting of the nails 18. Different types of nails were tested. Suitable nails include, but not limited to, 10 d common bright finish nails (with 0.148 inch shank diameter). Each nail is preferably about 3 inches long as at such length, the nail is not too short that it can be embedded in the block with one hit but not too long that it is impossible for a beginner to embed it completely. Applicants discovered that other finishes such as zinc dipped, ring type, coated sinkers are too tough to hit into the block. Cut nails are also discovered to be unsuitable as they act as miniature splitting wedges and tend to split the block when driven into the block.

FIG. 10 is a partially transparent top perspective view of one embodiment of the present block 4 and its corresponding support tray 6. In this embodiment, the key 64 is essentially a dome disposed centrally in the depressed portion 74 of the support tray 6. Four apertures 92 are disposed on the dome to enable penetration of four screws 98 from the bottom surface of the support tray 6 to secure the block 4 at its matching slot 66. One notable difference between the key-slot combination of FIG. 10 and that of FIG. 8 lies in the shape of the key 64 of FIG. 10 which enables it to cause auto-centering of the block with its matching slot 66. As such, the block 4 can be more easily aligned with the key 64 before the screws 98 are tightened to secure the block 4 against the support tray 6 to prevent movement of the block 4 relative to the support tray 6. Applicants discovered that by scaling down the block 4 as compared to conventional blocks, the present block 4 becomes transportable but more easily moved relative to its support tray when struck. The screws 98 aid in securing the block 4 and transferring or lessening strike forces experienced by the block 4 to the support tray and leg structure. Slots 96 that extend outwardly from the key 64 are provided such that if the key 64 is intentionally removed (e.g., to accommodate a non-qualified block), the support tray 6 will not properly support the block 4 as there will be insufficient material centrally disposed in the depressed portion 74 to securely hold the block 4. It shall also be noted that in this embodiment, a wall 88 extending upwardly from the periphery of the depressed portion 74 provides additional barrier to confine separated pieces of a block 4 from leaving the depressed portion 74. Again, the play between the block and the wall 88

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shall not be too large as to accommodate the striking end of a hammer or the hammer may become stuck between the support tray and the block. A wall **90** that extends upwardly along the periphery of the flange **8** provides a further barrier for any missed strikes as they act to arrest these strikes from continuing in their trajectories downwardly toward the user. FIG. **11** is a top perspective view of the embodiment disclosed in FIG. **10** with the block **4** disposed in a seated and secured position. It shall be noted that upon being seated, the block preferably protrudes by a distance **100** of from about 0.25 inch to about 0.5 inch from the top end of the wall **88** around the block **4**.

In one embodiment, it is also conceivable to have a leg structure that is adjustable in height to suit users of all builds and sizes. In one embodiment not shown, a second leg structure that is capable of a different height is provided. In yet another embodiment not shown, each leg is made adjustable in length, e.g., via a lockable telescopic mechanism.

There is further provided a carrying bag for holding the leg structure, hammer and nails. Suitable bags include, but not limited to banjo style case (having a cylindrical portion for holding a cylindrically shaped block and an elongated portion where a collapsed leg structure can be stored), a folding chair bag, a soft sided cooler, a tube can cooler and a tool belt. It is also possible that the block can be carried separately from the leg structure to further separate the weights so that they may be hauled more efficiently or even in separate trips so as not to over burden a user. The act of transporting the block separately also increases the possibility that the playing surface (which may include a logo and other marketing information) of the block can be exposed. In addition, a bag may also be equipped with a handle or strap to facilitate grasping of the bag, storage pockets for nails, hammer holster for securing a hammer, etc. In other embodiments, other accessories, e.g., bottle opener, cup holder, etc., may be added to the bag and/or the support tray or the leg structure.

The detailed description refers to the accompanying drawings that show, by way of illustration, specific aspects and embodiments in which the present disclosed embodiments may be practiced. These embodiments are described in sufficient detail to enable those skilled in the art to practice aspects of the present invention. Other embodiments may be utilized, and changes may be made without departing from the scope of the disclosed embodiments. The various embodiments can be combined with one or more other embodiments to form new embodiments. The detailed description is, therefore, not to be taken in a limiting sense, and the scope of the present invention is defined only by the appended claims, with the full scope of equivalents to which they may be entitled. It will be appreciated by those of ordinary skill in the art that any arrangement that is calculated to achieve the same purpose may be substituted for the specific embodiments shown. This application is intended to cover any adaptations or variations of embodiments of the present invention. It is to be understood that the above description is intended to be illustrative, and not restrictive, and that the phraseology or terminology employed herein is for the purpose of description and not of limitation. Combinations of the above embodiments and other embodiments will be apparent to those of skill in the art upon studying the above description. The scope of the present disclosed embodiments includes any other applications in which embodiments of the above structures and fabrication methods are used. The scope of the embodiments should be determined with reference to the appended claims, along with the full scope of equivalents to which such claims are entitled.

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What is claimed herein is:

1. A collection of game pieces comprising:

(a) a block having a top surface, a first width and a thickness; and

(b) a support tray having a top surface, a bottom surface, a second width, wherein said support tray is adapted to removably receive said block centrally on said top surface, and wherein the ratio of said first width and said second width ranges from about 6:7 to about 1:2 such that a flange of said support tray is formed and said top surface of said support tray further comprises a depressed portion adapted to form a fringe to secure said block,

whereby said block is configured to receive a plurality of nails driven into it using a striking tool and if the striking tool accidentally misses said block while used in driving a nail into said block, said flange is used to arrest the striking motion of the striking tool.

2. The collection of game pieces of claim 1, further comprising at least one leg socket adapted to said bottom surface of said support tray.

3. The collection of game pieces of claim 2, further comprising a leg structure removably connected to said at least one leg socket to support said support tray.

4. The collection of game pieces of claim 3, wherein said leg structure is collapsible to facilitate transport of said leg structure.

5. The collection of game pieces of claim 3, wherein said leg structure comprises four legs capable of being erected in a rectangular stance.

6. The collection of game pieces of claim 5, wherein each of said four legs comprises a bottom end and a foot disposed on the bottom end of said each of said four legs.

7. The collection of game pieces of claim 6, further comprising an aperture disposed on at least one of said feet, wherein said aperture is adapted to receive a stake.

8. The collection of game pieces of claim 1, wherein said block comprises a material having a density of from about 20 to about 40 lbs/ft³.

9. The collection of game pieces of claim 1, wherein said block comprises a material having a Janka hardness of from about 350 to about 550.

10. The collection of game pieces of claim 1, wherein said block comprises a material selected from the group consisting of natural wood, glulam, Medium-Density Fiberboard (MDF) and Urethane Foam Board.

11. The collection of game pieces of claim 1, further comprising a carrying strap having two ends, each end adapted to a portion of said support tray to facilitate transport of said support tray.

12. The collection of game pieces of claim 1, the size of each of said plurality of nails is about 10 d.

13. The collection of game pieces of claim 1, wherein the thickness of said block ranges from about 4 inches to about 6 inches and the first width ranges from about 10 inches to about 16 inches.

14. The collection of game pieces of claim 1, wherein the thickness of said block ranges from about 4 inches to about 6 inches.

15. The collection of game pieces of claim 1, wherein said top surface of said block further comprising a marking designation disposed at a pre-determined distance from a side wall of said block.

16. The collection of game pieces of claim 1, further comprising at least one level for indicating inclination of said support tray about one axis of rotation.

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17. A collection of game pieces comprising:
- (a) a block having a top surface, a first width and a thick-
ness; and
 - (b) a support tray having a top surface, a bottom surface, a
second width, wherein said support tray is adapted to
removably receive said block centrally on said top sur-
face, and wherein the ratio of said first width and said
second width ranges from about 6:7 to about 1:2 such
that a flange of said support tray is formed and said top
surface of said support tray further comprises at least one
key configured to be coupled to a matching slot of said
block to prevent movement of said block relative to said
support tray and to prevent use of an unqualified block,
whereby said block is configured to receive a plurality of
nails driven into it using a striking tool and if the striking
tool accidentally misses said block while used in driving
a nail into said block, said flange is used to arrest the
striking motion of the striking tool.

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18. A collection of game pieces comprising:
- (a) a block having a top surface, a first width and a thick-
ness;
 - (b) a support tray having a top surface, a bottom surface, a
second width, wherein said support tray is adapted to
removably receive said block centrally on said top sur-
face, and wherein the ratio of said first width and said
second width ranges from about 6:7 to about 1:2 such
that a flange of said support tray is formed; and
 - (c) a wall extending upwardly from the periphery of said
flange,
- whereby said block is configured to receive a plurality of
nails driven into it using a striking tool and said flange
and said wall are configured to arrest the striking motion
of the striking tool that misses said block and to contain
any inadvertently separated edges of said block from
leaving said support tray.

* * * * *

Generated on: This page was generated by TSDR on 2023-01-20 19:02:07 EST

Mark: KNOGGLE

Knoggle

US Serial Number: 97012566

Application Filing Date: Sep. 04, 2021

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Nov. 02, 2022

Publication Date: Oct. 04, 2022

Mark Information

Mark Literal Elements: KNOGGLE

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 1(b)

For: Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Eichenfeld LLC

Owner Address: 7126 Fisher Road
Oakfield, NEW YORK UNITED STATES 14125

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country NEW YORK
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Tracy Jong

Docket Number: 10077-4

Attorney Primary docketclerk@tracyjonglawfirm.com
Email Address:

Attorney Email Yes
Authorized:

Correspondent

Correspondent Tracy Jong
Name/Address: TRACY JONG LAW FIRM
216 KING RD.
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Correspondent e-mail: docketclerk@tracyjonglawfirm.com tjong@tracyjonglawfirm.com
nqlawfirm.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Nov. 02, 2022	EXTENSION OF TIME TO OPPOSE RECEIVED	
Oct. 04, 2022	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 04, 2022	PUBLISHED FOR OPPOSITION	
Sep. 14, 2022	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Aug. 27, 2022	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 26, 2022	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Aug. 25, 2022	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Aug. 25, 2022	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 10, 2022	NOTIFICATION OF NON-FINAL ACTION E-MAILED	
Jun. 10, 2022	NON-FINAL ACTION E-MAILED	
Jun. 10, 2022	NON-FINAL ACTION WRITTEN	81855
Jun. 09, 2022	ASSIGNED TO EXAMINER	81855
Oct. 16, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED	
Sep. 08, 2021	NEW APPLICATION ENTERED	

TM Staff and Location Information

TM Staff Information

TM Attorney: HOFFMAN, DAVID AARON

Law Office LAW OFFICE 107
Assigned:

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 29, 2022

Proceedings

Summary

Number of 1

Proceedings:

Type of Proceeding: Extension of Time

Proceeding Number: [97012566](#)

Filing Date: Nov 02, 2022

Status: Extension of Time to Oppose Filed

Status Date: Nov 02, 2022

Interlocutory Attorney:

Defendant

Name: Eichenfeld LLC

Correspondent Address: TRACY JONG
TRACY JONG LAW FIRM
216 KING RD.
CHURCHVILLE NY UNITED STATES , 14428

Correspondent e-mail: docketclerk@tracyjonglawfirm.com , tjong@tracyjonglawfirm.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
KNOGGLE	Request For Extension of Time to File Opposition	97012566	

Potential Opposer(s)

Name: WRB, Inc.

Correspondent Address: JAMES B MARTIN
WRB, INC.
5865 NEAL AVE N, #113
STILLWATER MN UNITED STATES , 55082

Correspondent e-mail: trademark@hammerschlagen.com

Prosecution History

Entry Number	History Text	Date	Due Date
2	EXT GRANTED	Nov 02, 2022	
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	Nov 02, 2022	

From: TMOOfficialNotices@USPTO.GOV
Sent: Tuesday, October 4, 2022 00:49 AM
To: docketclerk@tracyjonglawfirm.com
Cc: tjong@tracyjonglawfirm.com
Subject: Official USPTO Notice of Publication Confirmation: U.S. Trademark SN 97012566: KNOGGLE: Docket/Reference No. 10077-4

TRADEMARK OFFICIAL GAZETTE PUBLICATION CONFIRMATION

U.S. Serial Number: 97012566
Mark: KNOGGLE
International Class(es): 028, 041
Owner: Eichenfeld LLC
Docket/Reference Number: 10077-4

The mark identified above has been published in the Trademark Official Gazette (TMOG) on Oct 04, 2022.

To Review the Mark in the TMOG:

Click on the following link or paste the URL into an internet browser: <https://tmog.uspto.gov/#issueDate=2022-10-04&serialNumber=97012566>

On the publication date or shortly thereafter, the applicant should carefully review the information that appears in the TMOG for accuracy. For corrections or amendments after publication, please use the Post-Approval/Publication/Post-Notice of Allowance (NOA) Amendment Form, accessible at <https://teas.uspto.gov/office/ppa>. For general information about this notice, please contact the Trademark Assistance Center at 1-800-786-9199.

Significance of Publication for Opposition:

- * Any party who believes it will be damaged by the registration of the mark may file a notice of opposition (or extension of time therefor) with the Trademark Trial and Appeal Board. If no party files an opposition or extension request within thirty (30) days after the publication date, then eleven (11) weeks after the publication date a notice of allowance (NOA) should issue. (Note: The applicant must file a complete Statement of Use or Extension Request with the required fees within six (6) months after the NOA issues to avoid abandonment of the application.)

To check the status of the application, go to https://tsdr.uspto.gov/#caseNumber=97012566&caseType=SERIAL_NO&searchType=statusSearch or contact the Trademark Assistance Center at 1-800-786-9199. Please check the status of the application at least every three (3) months after the application filing date.

To view this notice and other documents for this application on-line, go to https://tsdr.uspto.gov/#caseNumber=97012566&caseType=SERIAL_NO&searchType=documentSearch. NOTE: This notice will only become available on-line the next business day after receipt of this e-mail.

Trademark Snap Shot Publication Stylesheet
(Table presents the data on Publication Approval)

OVERVIEW

SERIAL NUMBER	97012566	FILING DATE	09/04/2021
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	TRADEMARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	HOFFMAN, DAVID AARON	L.O. ASSIGNED	107

PUB INFORMATION

RUN DATE	08/30/2022		
PUB DATE	10/04/2022		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	08/29/2022		
LITERAL MARK ELEMENT	KNOGGLE		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	NO	1 (a)	NO	1 (a)	NO
1 (b)	YES	1 (b)	YES	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	KNOGGLE
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
------------	-----------------------

NAME	Eichenfeld LLC
ADDRESS	7126 Fisher Road Oakfield, NY 14125
ENTITY	16-LTD LIAB CO
CITIZENSHIP	New York

GOODS AND SERVICES

INTERNATIONAL CLASS	028
DESCRIPTION TEXT	Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker
INTERNATIONAL CLASS	041
DESCRIPTION TEXT	Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards

GOODS AND SERVICES CLASSIFICATION

INTERNATIONAL CLASS	028	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE
INTERNATIONAL CLASS	041	FIRST USE DATE	NONE	FIRST USE IN COMMERCE DATE	NONE	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS

CHANGE IN REGISTRATION	NO
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PROSECUTION HISTORY

DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
08/27/2022	CNSA	P	APPROVED FOR PUB - PRINCIPAL REGISTER	010
08/26/2022	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	009
08/25/2022	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	008
08/25/2022	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	007
06/10/2022	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	006
06/10/2022	GNRT	F	NON-FINAL ACTION E-MAILED	005
06/10/2022	CNRT	R	NON-FINAL ACTION WRITTEN	004
06/09/2022	DOCK	D	ASSIGNED TO EXAMINER	003
10/16/2021	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
09/08/2021	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Tracy Jong
CORRESPONDENCE ADDRESS	Tracy Jong TRACY JONG LAW FIRM 216 KING RD. CHURCHVILLE NY 14428
DOMESTIC REPRESENTATIVE	NONE



Knoggle

Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	97012566
LAW OFFICE ASSIGNED	LAW OFFICE 107
MARK SECTION	
MARK	mark
LITERAL ELEMENT	KNOGGLE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
GOODS AND/OR SERVICES SECTION (028) (current)	
INTERNATIONAL CLASS	028
DESCRIPTION	
game apparatus, in particular game components including a striker for a game in which participants drive nails into logs or wooden boards using the striker	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (028) (proposed)	
INTERNATIONAL CLASS	028
TRACKED TEXT DESCRIPTION	
game apparatus, in particular game components including a striker for a game in which participants drive nails into logs or wooden boards using the striker; Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker	
FINAL DESCRIPTION	
Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker	
WEBPAGE URL	None Provided
WEBPAGE DATE OF ACCESS	None Provided
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (041) (current)	
INTERNATIONAL CLASS	041
DESCRIPTION	
entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards	
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (041) (proposed)	
INTERNATIONAL CLASS	041
TRACKED TEXT DESCRIPTION	
entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards ; Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards	
FINAL DESCRIPTION	
Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards	
WEBPAGE URL	None Provided
WEBPAGE DATE OF ACCESS	None Provided
FILING BASIS	Section 1(b)
CORRESPONDENCE INFORMATION (current)	
NAME	TRACY JONG
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	docketclerk@tracyjonglawfirm.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	tjong@tracyjonglawfirm.com
DOCKET/REFERENCE NUMBER	10077-4
CORRESPONDENCE INFORMATION (proposed)	
NAME	Tracy Jong
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	docketclerk@tracyjonglawfirm.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	tjong@tracyjonglawfirm.com
DOCKET/REFERENCE NUMBER	10077-4
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Tracy P. Jong/
SIGNATORY'S NAME	Tracy P. Jong
SIGNATORY'S POSITION	Attorney of record, New York Bar Member
SIGNATORY'S PHONE NUMBER	15852479170
DATE SIGNED	08/25/2022
ROLE OF AUTHORIZED SIGNATORY	Authorized U.S.-Licensed Attorney
SIGNATURE METHOD	Signed directly within the form
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Aug 25 15:16:58 ET 2022
TEAS STAMP	USPTO/ROA-XX.XX.XXX.XX-20 220825151658525537-970125 66-8008a485091a114c9f0fa d3eb992138df6115fec435b2c 20146b134132194ce99-N/A-N /A-20220825150138478876

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **97012566** KNOGGLE(Standard Characters, see <https://tmng-al.uspto.gov/resting2/api/img/97012566/large>) has been amended as follows:

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following:

Current:

Class 028 for game apparatus, in particular game components including a striker for a game in which participants drive nails into logs or wooden boards using the striker

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* The applicant believes the applicant is entitled to use the mark in commerce on or in connection with the goods or services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date. ***For a collective trademark, collective service mark, collective membership mark, or certification mark application:*** The applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date. ***For a certification mark application:*** The applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Proposed:

Tracked Text Description: ~~game apparatus, in particular game components including a striker for a game in which participants drive nails into logs or wooden boards using the striker;~~ Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker

Class 028 for Action skill games comprising a striker, a wooden board, and nails in which participants drive nails into logs or wooden boards using the striker

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* The applicant believes the applicant is entitled to use the mark in commerce on or in connection with the goods or services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date. ***For a collective trademark, collective service mark, collective membership mark, or certification mark application:*** The applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date. ***For a certification mark application:*** The applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Webpage URL: None Provided

Webpage Date of Access: None Provided

Applicant proposes to amend the following:

Current:

Class 041 for entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards

Filing Basis: Section 1(b), Intent to Use: *For a trademark or service mark application:* The applicant believes the applicant is entitled to use the mark in commerce on or in connection with the goods or services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date. ***For a collective trademark, collective service mark, collective membership mark, or certification mark application:*** The applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date. ***For a certification mark application:*** The applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Proposed:

Tracked Text Description: ~~entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards;~~ Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards

Class 041 for Entertainment services in the nature of conducting live in-person skill games in which participants drive nails into logs or wooden boards

Filing Basis: Section 1(b), Intent to Use: For a trademark or service mark application: The applicant believes the applicant is entitled to use the mark in commerce on or in connection with the goods or services specified in the application; the applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date. **For a collective trademark, collective service mark, collective membership mark, or certification mark application:** The applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce and had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce as of the application filing date. **For a certification mark application:** The applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Webpage URL: None Provided

Webpage Date of Access: None Provided

Correspondence Information (current):

TRACY JONG

PRIMARY EMAIL FOR CORRESPONDENCE: docketclerk@tracyjonglawfirm.com

SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): tjong@tracyjonglawfirm.com

The docket/reference number is 10077-4.

Correspondence Information (proposed):

Tracy Jong

PRIMARY EMAIL FOR CORRESPONDENCE: docketclerk@tracyjonglawfirm.com

SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): tjong@tracyjonglawfirm.com

The docket/reference number is 10077-4.

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the owner/holder and the owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

SIGNATURE(S)

Response Signature

Signature: /Tracy P. Jong/ Date: 08/25/2022

Signatory's Name: Tracy P. Jong

Signatory's Position: Attorney of record, New York Bar Member

Signatory's Phone Number: 15852479170 Signature method: Signed directly within the form

The signatory has confirmed that he/she is a U.S.-licensed attorney who is an active member in good standing of the bar of the highest court of a U.S. state (including the District of Columbia and any U.S. Commonwealth or territory); and he/she is currently the owner's/holder's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S.-licensed attorney not currently associated with his/her company/firm previously represented the owner/holder in this matter: the owner/holder has revoked their power of attorney by a signed revocation or substitute power of attorney with the USPTO; the USPTO has granted that attorney's withdrawal request; the owner/holder has filed a power of attorney appointing him/her in this matter; or the owner's/holder's appointed U.S.-licensed attorney has filed a power of attorney appointing him/her as an associate attorney in this matter.

Mailing Address: TRACY JONG

TRACY JONG LAW FIRM

216 KING RD.

CHURCHVILLE, New York 14428

Mailing Address: Tracy Jong

TRACY JONG LAW FIRM
216 KING RD.
CHURCHVILLE, New York 14428

Serial Number: 97012566

Internet Transmission Date: Thu Aug 25 15:16:58 ET 2022

TEAS Stamp: USPTO/ROA-XX.XX.XXX.XX-20220825151658525

537-97012566-8008a485091a114c9f0f0ad3eb9

92138df6115fec435b2c20146b134132194ce99-

N/A-N/A-20220825150138478876

To: Tracy Jong(docketclerk@tracyjonglawfirm.com)
Subject: U.S. Trademark Application Serial No. 97012566 - KNOGGLE - 10077-4
Sent: June 10, 2022 08:38:34 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

**United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application**

U.S. Application Serial No. 97012566

Mark: KNOGGLE

Correspondence Address:

TRACY JONG
TRACY JONG LAW FIRM
216 KING RD.
CHURCHVILLE NY 14428 UNITED STATES

Applicant: Eichenfeld LLC

Reference/Docket No. 10077-4

Correspondence Email Address: docketclerk@tracyjonglawfirm.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: June 10, 2022

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Search of USPTO Records

The trademark examining attorney searched the USPTO database of registered and pending marks and found no conflicting marks that would bar registration under Trademark Act Section 2(d). 15 U.S.C. §1052(d); TMEP §704.02.

Please call or email the assigned trademark examining attorney to resolve the issues in this Office action. Although the USPTO does not accept emails as responses to Office actions, communication by phone or email is permissible to agree to proposed amendments to the application that will immediately place the application in condition for publication, registration, or suspension. *See* 37 C.F.R. §2.62(c); TMEP §707.

SUMMARY OF ISSUES:

- Identification of the Goods and Services

Identification of the Goods and Services

Some of the wording in the identification of goods and services is indefinite and must be clarified as indicated below. *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend this wording to specify the common commercial or generic name of the goods and services. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.* If the services have no common commercial or generic name, applicant must describe or explain the nature of the services using clear and succinct language. *See id.*

More specifically, the wording “including” in the identification of goods is indefinite and must be deleted and replaced with a definite term, such as “namely,” “consisting of,” “particularly,” or “in particular.” *See* 37 C.F.R. §2.32(a)(6); TMEP §§1402.01, 1402.03(a). The identification must be specific and all-inclusive. This wording is an open-ended term (e.g., “including” and “such as”) that is not acceptable because it fails to identify specific goods. *See* TMEP §1402.03(a).

In addition, the wording "entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards" does not sufficiently identify the nature of the services and how they are provided.

The USPTO has the discretion to determine the degree of particularity needed to clearly identify goods and/or services covered by a mark. *In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A*, 109 USPQ2d 1593, 1597 (TTAB 2014) (citing *In re Omega SA*, 494 F.3d 1362, 1365, 83 USPQ2d 1541, 1543-44 (Fed. Cir. 2007)). Accordingly, the USPTO requires the description of goods and/or services in a U.S. application to be specific, definite, clear, accurate, and concise. TMEP §1402.01; *see In re Fiat Grp. Mktg. & Corp. Commc'ns S.p.A*, 109 USPQ2d at 1597-98; *Cal. Spray-Chem. Corp. v. Osmose Wood Pres. Co. of Am.*, 102 USPQ 321, 322 (Comm'r Pats. 1954).

Applicant may substitute the following wording, if accurate:

"Action skill games comprising game apparatus, in particular game components including a striker, {list other components of game, e.g., a wooden board, and nails} for a game in which participants drive nails into logs or wooden boards using the striker," in International Class 028.

"Entertainment services in the nature of conducting live in-person skill games providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards," in

International Class 041.

Applicant's goods and/or services may be clarified or limited, but may not be expanded beyond those originally itemized in the application or as acceptably amended. See 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant may clarify or limit the identification by inserting qualifying language or deleting items to result in a more specific identification; however, applicant may not substitute different goods and/or services or add goods and/or services not found or encompassed by those in the original application or as acceptably amended. See TMEP §1402.06(a)-(b). The scope of the goods and/or services sets the outer limit for any changes to the identification and is generally determined by the ordinary meaning of the wording in the identification. TMEP §§1402.06(b), 1402.07(a)-(b). Any acceptable changes to the goods and/or services will further limit scope, and once goods and/or services are deleted, they are not permitted to be reinserted. TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable U.S. Acceptable Identification of Goods and Services Manual. See TMEP §1402.04.

How to respond. [Click to file a response to this nonfinal Office action.](#)

/David Hoffman/
David Hoffman
Trademark Examining Attorney
Law Office 107
(571) 272-8805
david.hoffman@uspto.gov

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** The response must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- [Responses signed by an unauthorized party](#) are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find** [contact information for the supervisor](#) of the office or unit listed in the signature block.

United States Patent and Trademark Office (USPTO)

USPTO OFFICIAL NOTICE

Office Action (Official Letter) has issued
on June 10, 2022 for
U.S. Trademark Application Serial No. 97012566

A USPTO examining attorney has reviewed your trademark application and issued an Office action. You must respond to this Office action in order to avoid your application abandoning. Follow the steps below.

- (1) [Read the Office action](#). This email is NOT the Office action.
- (2) **Respond to the Office action by the deadline** using the Trademark Electronic Application System (TEAS). Your response must be received by the USPTO on or before 11:59 p.m. **Eastern Time** of the last day of the response period. Otherwise, your application will be [abandoned](#). See the Office action itself regarding how to respond.
- (3) **Direct general questions** about using USPTO electronic forms, the USPTO [website](#), the application process, the status of your application, and whether there are outstanding deadlines to the [Trademark Assistance Center \(TAC\)](#).

After reading the Office action, address any question(s) regarding the specific content to the USPTO examining attorney identified in the Office action.

GENERAL GUIDANCE

- [Check the status](#) of your application periodically in the [Trademark Status & Document Retrieval \(TSDR\)](#) database to avoid missing critical deadlines.
- [Update your correspondence email address](#) to ensure you receive important USPTO notices about your application.
- [Beware of trademark-related scams](#). Protect yourself from people and companies that may try to take financial advantage of you. Private companies may call you and pretend to be the USPTO or may send you communications that resemble official USPTO documents to trick you. We will never request your credit card number or social security number over the phone. And all official USPTO correspondence will only be emailed from the domain “@uspto.gov.” Verify the correspondence originated from us by using your Serial Number in our database, [TSDR](#), to confirm that it appears under the “Documents” tab, or contact the [Trademark Assistance Center](#).

- **Hiring a U.S.-licensed attorney**. If you do not have an attorney and are not required to have one under the trademark rules, we encourage you to hire a U.S.-licensed attorney specializing in trademark law to help guide you through the registration process. The USPTO examining attorney is not your attorney and cannot give you legal advice, but rather works for and represents the USPTO in trademark matters.

Trademark/Service Mark Application, Principal Register

Serial Number: 97012566

Filing Date: 09/04/2021

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	97012566
MARK INFORMATION	
*MARK	Knoggle
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Knoggle
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Eichenfeld LLC
*MAILING ADDRESS	7126 Fisher Road
*CITY	Oakfield
*STATE (Required for U.S. applicants)	New York
*COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	14125
PHONE	585-948-5838
*EMAIL ADDRESS	XXXX
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY/REGION/JURISDICTION/U.S. TERRITORY WHERE LEGALLY ORGANIZED	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	041
*IDENTIFICATION	entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	028
*IDENTIFICATION	game apparatus, in particular game components including a

*IDENTIFICATION	striker for a game in which participants drive nails into logs or wooden boards using the striker
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Tracy Jong
ATTORNEY DOCKET NUMBER	10077-4
ATTORNEY BAR MEMBERSHIP NUMBER	XXX
YEAR OF ADMISSION	XXXX
U.S. STATE/ COMMONWEALTH/ TERRITORY	XX
FIRM NAME	Tracy Jong Law Firm
STREET	216 King Rd.
CITY	CHURCHVILLE
STATE	New York
COUNTRY/REGION/JURISDICTION/U.S. TERRITORY	United States
ZIP/POSTAL CODE	14428
PHONE	585-247-9170
FAX	585-247-9171
EMAIL ADDRESS	docketclerk@tracyjonglawfirm.com
CORRESPONDENCE INFORMATION	
NAME	Tracy Jong
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	docketclerk@tracyjonglawfirm.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	tjong@tracyjonglawfirm.com
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS Standard
NUMBER OF CLASSES	2
APPLICATION FOR REGISTRATION PER CLASS	350
*TOTAL FEES DUE	700
*TOTAL FEES PAID	700
SIGNATURE INFORMATION	
SIGNATURE	/tracy jong/
SIGNATORY'S NAME	Tracy Jong
SIGNATORY'S POSITION	attorney of record, New York Bar member
SIGNATORY'S PHONE NUMBER	585-247-9170
DATE SIGNED	09/04/2021
SIGNATURE METHOD	Signed directly within the form

Trademark/Service Mark Application, Principal Register

Serial Number: 97012566

Filing Date: 09/04/2021

To the Commissioner for Trademarks:

MARK: Knoggle (Standard Characters, see [mark](#))

The literal element of the mark consists of Knoggle. The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Eichenfeld LLC, a limited liability company legally organized under the laws of New York, having an address of

7126 Fisher Road
Oakfield, New York 14125
United States
585-948-5838(phone)
XXXX

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 041: entertainment services in the nature of providing persons an opportunity to participate in a game in which participants drive nails into logs or wooden boards

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 028: game apparatus, in particular game components including a striker for a game in which participants drive nails into logs or wooden boards using the striker

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The owner's/holder's proposed attorney information: Tracy Jong. Tracy Jong of Tracy Jong Law Firm, is a member of the XX bar, admitted to the bar in XXXX, bar membership no. XXX, is located at

216 King Rd.
CHURCHVILLE, New York 14428
United States
585-247-9170(phone)
585-247-9171(fax)
docketclerk@tracyjonglawfirm.com

The docket/reference number is 10077-4.

Tracy Jong submitted the following statement: The attorney of record is an active member in good standing of the bar of the highest court of a U.S. state, the District of Columbia, or any U.S. Commonwealth or territory.

The applicant's current Correspondence Information:

Tracy Jong
PRIMARY EMAIL FOR CORRESPONDENCE: docketclerk@tracyjonglawfirm.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): tjong@tracyjonglawfirm.com

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the applicant owner/holder and the applicant owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

A fee payment in the amount of \$700 has been submitted with the application, representing payment for 2 class(es).

Declaration

☒ **Basis:**

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce and was in use in commerce as of the filing date of the application on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application and was used on or in connection with the goods/services in the application as of the application filing date; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
 - The applicant has a bona fide intention to use the mark in commerce and had a bona fide intention to use the mark in commerce as of the application filing date on or in connection with the goods/services in the application; and
 - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- ☒ To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- ☒ To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- ☒ The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /tracy jong/ Date: 09/04/2021

Signatory's Name: Tracy Jong

Signatory's Position: attorney of record, New York Bar member

Signatory's Phone Number: 585-247-9170

Signature method: Signed directly within the form

Payment Sale Number: 97012566

Payment Accounting Date: 09/07/2021

Serial Number: 97012566

Internet Transmission Date: Sat Sep 04 20:46:57 ET 2021

TEAS Stamp: USPTO/BAS-XX.XXX.XXX.XXX-202109042046576

04463-97012566-781a8b6c329141b503dd25c5f

ddba8d634f44969767797c73a37e963d29e7d771

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Knoggle

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

JAMES B MARTIN
WRB, INC.
5865 NEAL AVE N
#113
STILLWATER, MN 55082

November 2, 2022

Serial No.: **97012566**

ESTTA TRACKING NO: ESTTA1245428

The request to extend time to oppose is granted until **02/01/2023** on behalf of potential opposer **WRB, Inc..**

Please do not hesitate to contact the Trademark Trial and Appeal Board at (571)272-8500 if you have any questions relating to this extension.

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

WRB, Inc. d/b/a Hammer-Schlagen,
Plaintiff,

Civil No. 20-2521 (JRT/TNL)

v.

PERMANENT INJUNCTION

Schram Haus Brewing, LLC, Aaron Schram,
and ASHLEY SCHRAM,

Defendants.

Chad A Snyder, Michael H Frasier, **RUBRIC LEGAL LLC**, 111 Third Avenue South, Suite 110, Minneapolis, MN 55401, for plaintiff.

Steven J Sheridan, **FISHER BREN & SHERIDAN, LLP**, 920 2nd Avenue South, Suite 975, Minneapolis, MN 55402, for defendants.

The parties filed a Stipulation for Permanent Injunction on February 24, 2021. (ECF No. 11) Based on the Stipulation, the Court makes the following Findings and Order:

FINDINGS OF FACT

1. WRB, Inc. owns the following intellectual property (collectively “WRB Intellectual Property”:
 - a. WRB, Inc. is the owner of the following trademarks and service marks:
 - i. The Hammer-Schlagen Logo (Reg. No. 2,405,337);
 - ii. “Get Hammered” (Reg. No. 4,918,202)
 - iii. “Get Nailed” (Reg. No. 4,798,570)

- iv. “Hammer-Schlagen” (Reg. No. 4,804,117)
 - b. WRB, Inc. is the owner of the trade dress identified as the HammerSchlagen Stump (Reg. No. 5,548,112).
 - c. WRB, Inc. owns the registered copyright to the “Hammer-Schlagen Rules” (Reg. No. TX-8-092-585).
- 2. WRB’s intellectual property identified above is valid and enforceable and WRB is obligated to protect its rights to it.
 - 3. WRB brought claims under federal and state law against the Defendants in the above-captioned action, pursuant to the Lanham Act (15 U.S.C. §§ 1114, 1125.), the Copyright Act (17 U.S.C. § 106 et. seq), and Minn. Stat. § 325D.44 alleging trademark and copyright infringement.
 - 4. Entry and enforcement of this Stipulated Permanent Injunction against Defendants is within the authority of this Court, as it will achieve the purposes of the Lanham Act, the Copyright Act, and the laws of the State of Minnesota as related to trademark and copyright infringement.

BASED ON THE FOREGOING, IT IS HEREBY ORDERED:

- 1. Defendants, along with their officers, agents, servants, employees, representatives, successors and assignees, and all other persons or entities acting in concert or participation with them as provided in Fed. R. Civ. P. 65, shall be and are each hereby **PERMANENTLY ENJOINED** and **RESTRAINED** from:

- a. Using WRB Intellectual Property in connection with any advertising, promotion, or sale of any goods or services;
 - b. Using any trademarks, service marks, or trade dress in a manner likely to cause mistake or confusion with WRB Intellectual Property;
 - c. Making representations by any means, directly or indirectly, that are likely to cause confusion, mistake, or to deceive consumers about the ownership, origin, or validity of WRB Intellectual Property.
2. The Court shall retain jurisdiction to entertain and resolve such future disputes and proceedings and to enter such further orders as may be appropriate to implement and enforce the provisions of this Stipulated Permanent Injunction, whereupon proof of any violation, the Court shall be authorized to enjoin any future violation, award damages, and other relief available at law or in equity, including the recovery of reasonable attorney's fees and costs associated with enforcing this Stipulated Permanent Injunction, if allowable under Minnesota.
3. Notwithstanding anything to the contrary herein, this Stipulated Permanent Injunction will only remain in effect as long WRB maintains its registration of the trademarks and service marks referenced herein.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 1, 2021
at Minneapolis, Minnesota.

s/John R. Tunheim

JOHN R. TUNHEIM

Chief Judge

United States District Court

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

WRB, Inc. d/b/a Hammer-Schlagen,

File No. 21-cv-01599 (SRN/HB)

Plaintiff,

v.

**ORDER FOR PERMANENT
INJUNCTION**

The Lumberjack Company, Inc., and Sara
Jespersen

Defendants.

Chad A. Snyder and Michael H. Frasier, Rubric Legal LLC, 111 Third Avenue South, Suite 110, Minneapolis, MN 55401 for Plaintiff WRB, Inc. d/b/a Hammer-Shlagen.

Bryant D. Tchida and Christopher Ferreira, Moss & Barnett, 150 South Fifth Street, Suite 1200, Minneapolis, MN 55402 for Defendants The lumberjack Company, Inc. and Sara Jespersen.

This matter is before the Court upon the Stipulation for Permanent Injunction filed by the parties on August 12, 2021 [Doc. No. 16]. Based on the Stipulation, the Court makes the following Findings and Order:

FINDINGS

1. WRB, Inc. owns the following intellectual property (collectively “WRB Intellectual Property”:

a. WRB, Inc. is the owner of the following trademarks and service marks:

i. The Hammer-Schlagen Logo (Reg. No. 2,405,337);

ii. “Get Hammered” (Reg. No. 4,918,202)

iii. “Get Nailed” (Reg. No. 4,798,570)

iv. “Hammer-Schlagen” (Reg. No. 4,804,117)

b. WRB, Inc. is the owner of the trade dress identified as the HammerSchlagen Stump (Reg. No. 5,548,112).

2. WRB’s intellectual property identified above is valid and enforceable and WRB is obligated to protect its rights to it.
3. The Lumberjack Company licensed the rights to use WRB’s intellectual property.
4. The Lumberjack Company’s license terminated in February 2021.
5. The Lumberjack Company used WRB’s trademark Hammer-Schlagen after the license expired.
6. The Lumberjack Company used WRB’s trade dress Stump after the license expired.
7. The Lumberjack Company’s post-license use was unauthorized.
8. The Lumberjack Company’s post-license use was likely to cause confusion.
9. The Lumberjack Company’s post-license use caused actual confusion.
10. WRB brought claims under federal and state law against the Defendants in the above-captioned action, pursuant to the Lanham Act (15 U.S.C. §§ 1114, 1125), and Minn. Stat. § 325D.44 alleging trademark infringement.
11. Entry and enforcement of this Stipulated Permanent Injunction against Defendants is within the authority of this Court, as it will achieve the purposes

of the Lanham Act and the laws of the State of Minnesota as related to trademark infringement.

12. Defendants, along with their officers, agents, servants, employees, representatives, successors and assignees, and all other persons or entities acting in concert or participation with them as provided in Fed. R. Civ. P. 65, shall be and are each hereby **PERMANENTLY ENJOINED** and **RESTRAINED** from:

- a. Using WRB Intellectual Property in connection with any advertising, promotion, or sale of any goods or services;
- b. Using any trademarks, service marks, or trade dress in a manner likely to cause mistake or confusion with WRB Intellectual Property;
- c. Making representations by any means, directly or indirectly, that are likely to cause confusion, mistake, or to deceive consumers about the ownership, origin, or validity of WRB Intellectual Property.

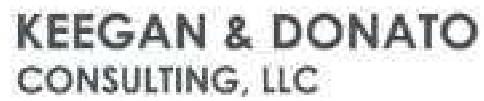
The Court shall retain jurisdiction to entertain and resolve such future disputes and proceedings and to enter such further orders as may be appropriate to implement and enforce the provisions of this Stipulated Permanent Injunction, whereupon proof of any violation, the Court shall be authorized to enjoin any future violation, award damages, and other relief available at law or in equity, including the recovery of reasonable attorney's fees and costs associated with enforcing this Stipulated Permanent Injunction.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 12, 2021

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge



**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Case No.: 0:21-cv-01899

Expert Report of Mark Keegan

Exhibit B, p.9

- The net confusion finding of 20.3 percent between the test cell (DAMM vs. WRB) and the control cell (DAMM KNIT vs. WRB) exceeds the threshold that is typically viewed as evidence of a likelihood of confusion among relevant consumers;
 - The primary study findings are supported by the control cell findings, which show a net likelihood of confusion finding of just 6.3 percent when respondents viewed a version of the defendant's Minneschlagen game which was modified to be non-infringing (i.e., "Minnesota");
 - Verbatim open-ended responses provided by study participants contain repeated references to the similarity of the defendant's DAMM name and the plaintiff's Mark, thereby confirming that the consumer confusion observed between DAMM and WRB is materially driven by the contested trademark issues being litigated in this matter; and
 - The likelihood of confusion finding in the parties' primary market area of Wisconsin and Minnesota (23.5 percent, n=102) mirrors that of the national sample (20.3 percent, n=220).
89. Overall, the findings of the likelihood of confusion study demonstrate that relevant consumers materially confuse the source origin of nail-driving games using the DAMM name and the WRB Mark. Because the survey design employed appropriate and rigorous controls, the likelihood of confusion findings are directly attributable to the contested trademark issues.

Genericness Study

Study Objective

90. The objective of the genericness study that I designed and conducted in this case was to determine whether and to what extent the term HAMMER-SCHLAGEN is understood by relevant consumers—i.e., likely purchasers of outdoor/yard games—as a brand name or a common name (i.e., a “generic” term) within the relevant marketplace.

Study Design

91. My genericness study employed the established Teflon format³⁶ for testing consumer perceptions of brand and common names. In cases concerning packaged consumer goods or branded services, the Teflon survey format presents respondents with a variety of names and phrases in use in the relevant market, including the name or phrase at issue in the case, and asks them to indicate their belief as to whether each term is a brand name or a common name. To the extent that a majority of respondents indicate that the name or phrase of interest is a brand name, this typically is considered to be evidence of a consumer's belief that the term is a brand; to the extent that the opposite occurs—i.e., that a majority of respondents indicate that the name or phrase is a common name—this is viewed as evidence that the name or phrase of interest is a common—or “generic”—name to consumers.³⁷
92. The Teflon format first exposes respondents to a training module wherein it is established that the respondents understand the conceptual difference between brand names and common names. Only those respondents who prove through their responses that they understand this difference are permitted to continue with the study. Upon passing the training module, respondents are exposed to a number of both brand and common names (randomized, presented sequentially) and are asked to indicate whether they believe each name to be a common name or a brand name (a “don't know/no opinion” answer option is also provided). Included in the set is the name of interest—in this case, HAMMER-SCHLAGEN.
93. Because the term that is central to the trademark issues in this matter—HAMMER-SCHLAGEN—is relevant within the outdoor/yard games market, the list employed in the study was tailored to present respondents with terms that are used in relation to outdoor/yard games. Specifically, the survey presented the following set of names, in random order, one at a time, to respondents: HAMMER-SCHLAGEN, HORSESHOES, BEAN BAG TOSS, DUNLOP, and AEROBIE.
94. In addition to presenting respondents with the term of interest (e.g., HAMMER-SCHLAGEN), the set of names was intentionally constructed to contain an equal number of

³⁶ *EI du Pont de Nemours and Co. v. Yoshida International Inc.* (393 F. Supp. 502 (E.D.N.Y. 1975)).

³⁷ McCarthy, T.J. (2020). *McCarthy on Trademarks and Unfair Competition*, 5th Ed., §32:192; Jay, E.D. (2009). “Genericness Surveys in Trademark Disputes: Evolution of Species.” *The Trademark Reporter*, Vol. 99, No. 5, p. 1127.

both brand names and common names that are in use in the outdoor/yard games market. Balancing the list in this manner prevents biases in data collection.

Data Integrity

95. The study data was examined to ensure data integrity. First, I examined the data to identify “speeders.” Respondents who complete the survey too quickly may introduce respondent-related error into the survey data. Respondents were to be flagged if they completed the survey in less than one-third of the median completion time across all respondents in the sample. No respondents were removed from the sample based on this criterion.
96. I also reviewed the data for low-quality and nonsense responses. Low-quality responses are not reflective of actual consumer opinions and therefore introduce biases into the data. Based on this criterion, one respondent was removed from the sample.
97. To reduce the potential for undesirable respondents to participate in the study, the screening portion of the questionnaire employed security questions, including a CAPTCHA question to prevent bots and other automated respondents from participating in the study. Respondents who did not pass the security measures were not permitted to complete the survey.

Questionnaire

Screener

98. Like the likelihood of confusion study, the relevant population for the genericness study is likely purchasers of outdoor/yard games. Accordingly, the genericness study employed the same screening criteria as the likelihood of confusion study and the screener portion of the genericness questionnaire was identical to that of the likelihood of confusion survey (see paragraphs 52 to 60 above).

Main Questionnaire

99. Respondents who had recently purchased an outdoor/yard game or anticipated doing so in the near future were considered “qualified” (i.e., a likely purchaser within the relevant market) and proceeded to the main portion of the questionnaire. The main questionnaire began with the following instruction:

For the remainder of this survey, if you do not know or do not have an opinion about any of the questions, please select the "don't know / no opinion" answer option. Please do not guess at any of your answers and please do not use the

Internet or any other sources to inform your answers. There are no right or wrong answers.

100. On the next page, respondents entered a training module to ensure that only participants who understand the difference between a brand name and a common name advanced to the primary task of the survey. Respondents were first provided with the following instruction:

This research is about outdoor / yard game products, some of which are known by **common names** and some of which are known by their **brand names**.

Common names are a generic indicator of a type of product; for example, "volleyball," "tennis," or "golf."

Brand names indicate a specific source or brand of a product; for example, "Wilson," "Prince," or "Titleist."

101. This instruction was then removed from view. The next two questions comprised a training module designed to confirm that respondents could differentiate between brand names and common names. Respondents were presented with the following questions, one at a time:

Do you understand **RING TOSS** to be a common name or a brand name?

- ☐ Brand name
- ☐ Common name
- ☐ Don't know

[next page]

Do you understand **JENGA** to be a common name or a brand name?

- ☐ Brand name
- ☐ Common name
- ☐ Don't know

102. Only those respondents who correctly indicated that RING TOSS is a common name and JENGA is a brand name were permitted to participate in the survey. The presentation order of these questions as well as the ordering of the question text and the answer options were all randomized to minimize the potential for order bias.
103. Upon passing the training module, respondents advanced to the primary measure of the study and were provided the following instruction:

Next you will be shown a variety of terms related to outdoor / yard game products. You may or may not have heard of all of the terms that will be presented. You will be asked your opinion about each term that you consider.

104. Respondents were then exposed, one at a time and in random order, to five terms used in the outdoor/yard games market—HAMMER-SCHLAGEN, BEAN BAG TOSS, HORSESHOES, DUNLOP, and AEROBIE—and were asked to indicate whether they believe each term to be a brand name or a common name (a “don’t know/no opinion” answer option was also provided). The term of interest (i.e., HAMMER-SCHLAGEN) was included in the set provided to respondents. For each term, respondents were provided with the following instruction and answer options:

Please read the term below and consider it as you would if you saw it in use on an outdoor / yard game product. Please indicate whether you understand the term to be a brand name, that is, a name that indicates a specific source for the product; or a common name, that is, a generic indicator of a type of product.

If you don’t have an opinion or don’t know, please feel free to select that answer.

[TERM DISPLAYED]

- ☐ Common name
- ☐ Brand name
- ☐ Don’t know / No opinion

105. The main questionnaire concluded with several standard demographic questions regarding household income and education level, as well as a final attention filter question. The full questionnaire is provided at Exhibit 8.

Sample Characteristics

106. The sample for this study is nationally representative, providing a robust, projectable overview of the opinions of likely purchasers of nail-driving games. Oversampling in Wisconsin and Minnesota allows for examination of consumer confusion within the parties’ primary market area. Demographic characteristics for the study participants are shown in Table 5 below.

Table 5. Sample characteristics - demographics - genericness study

	% Respondents (n=399)
Age	
18 - 30	24.1
31 - 40	37.3
41 - 50	17.0
51 - 60	9.5
61 - 70	7.0
71 or older	5.0
Education	
Less than high school	1.3
High school graduate	15.0
Some college	24.6
2-year degree	13.5
4-year degree	33.8
Master's / Professional degree	10.5
Doctorate	1.3
Household income	
Under \$35,000	14.3
\$35,000 - \$49,999	18.3
\$50,000 - \$74,999	22.6
\$75,000 - \$99,999	16.0
\$100,000 - \$124,999	11.5
\$125,000 - \$149,999	7.0
\$150,000 or more	9.0
Prefer not to answer	1.3
Gender	
Male	45.6
Female	53.9
Prefer to self-identify	0.3
Prefer not to answer	0.3
Region	
Northeast	15.0
South	22.1
West	15.8
Midwest	47.1

Results & Analysis

107. The findings of this study confirm that a majority of relevant consumers within the outdoor/yard games market—54.1 percent—understand the term HAMMER-SCHLAGEN

to be a brand name.³⁸ Just 15.8 percent of respondents indicated a belief that HAMMER-SCHLAGEN is a common name. Table 6 presents the genericness study results.

*Table 6. Genericness findings - full sample*³⁹

(Base: All respondents, n=399)	Brand Name %	Common Name %	No Opinion/ Don't Know %
Term of Interest (WRB)			
HAMMER-SCHLAGEN	54.1	15.8	30.1
Brand Names Tested			
DUNLOP	72.4	5.8	21.8
AEROBIE	52.6	11.0	36.3
Common Names Tested			
BEAN BAG TOSS	7.5	91.7	0.8
HORSESHOES	10.0	89.5	0.5

108. As shown in Table 6, the HAMMER-SCHLAGEN finding exceeds the majority threshold (i.e., 50 percent and greater) that is typically viewed by courts and other venues as evidence that a term is viewed by relevant consumers as a brand name. Additionally, because only 15.8 percent of respondents (well short of the 50 percent threshold) indicated a belief that HAMMER-SCHLAGEN is a common name with respect to outdoor/yard games, the study findings confirm that HAMMER-SCHLAGEN is not a generic term within the relevant market.

109. The other tested phrases serve as internal controls for the study. In a genericness survey, controls are used to evaluate the meaningfulness of the responses with respect to the phrase(s) of interest.⁴⁰

110. In this case, all study respondents correctly identified the four other tested terms as brand names (DUNLOP, AEROBIE) or common names (BEAN BAG TOSS, HORSESHOES).

³⁸ Of those respondents who expressed an opinion about whether or not HAMMER-SCHLAGEN is a generic term or a brand name (i.e., did not select “Don’t know / No opinion”) (n=279), 77.4 percent believe it to be a brand name.

³⁹ Percentages may not add to 100 due to rounding.

⁴⁰ Jay, E.D. (2009). “Genericness Surveys in Trademark Disputes: Evolution of Species.” *The Trademark Reporter*, Vol. 99, No. 5, p. 1126. See also *Id.* at p. 1139: “The control words in a Teflon Survey are used to evaluate respondents’ ability to distinguish brand names from common names, and they also provide a measure of the amount of guessing or ‘noise’ in the survey.”

For example, 72.4 percent of respondents correctly identified DUNLOP as a brand name and 91.7 percent identified BEAN BAG TOSS as a common name. This shows, empirically, that respondents understood the task they were asked to complete and confirms the study methodology as a valid measure of brand strength among relevant consumers in this matter.⁴¹

111. A review of the sub-sample of respondents residing in Minnesota and Wisconsin confirms the genericness study results. As shown in Table 7 below, 52.3 percent of Minnesota and Wisconsin respondents identified HAMMER-SCHLAGEN as a brand name,⁴² whereas 22.0 percent indicated a belief that HAMMER-SCHLAGEN is a common name.

Table 7. Genericness findings - Minnesota and Wisconsin only⁴³

(Base: MN and WI Respondents, n=132)	Brand Name %	Common Name %	No Opinion/ Don't Know %
Term of Interest (WRB)			
HAMMER-SCHLAGEN	52.3	22.0	25.8
Brand Names Tested			
DUNLOP	66.7	5.3	28.0
AEROBIE	50.8	9.1	40.2
Common Names Tested			
BEAN BAG TOSS	7.6	92.4	0.0
HORSESHOES	9.1	90.9	0.0

112. Based on the findings presented herein, the study results support the conclusion that the term HAMMER-SCHLAGEN is considered a brand name by consumers in the market for outdoor/yard games and is not a generic term within the relevant market.

Conclusions - Genericness Study

113. The results of this study of 399 likely purchasers of nail-driving games provides empirical evidence that the term HAMMER-SCHLAGEN is a brand name with respect to

⁴¹ As Judge Neaher noted in the original Teflon decision, “the public is quite good at sorting out brand names from common names.” *El du Pont de Nemours and Co. v. Yoshida International Inc.* (393 F. Supp. 502 (E.D.N.Y. 1975)).

⁴² Of those Minnesota and Wisconsin respondents who expressed an opinion about whether or not HAMMER-SCHLAGEN is a generic term or a brand name (i.e., did not select “Don’t know / No opinion”) (n=98), 70.4 percent believe it to be a brand name.

⁴³ Percentages may not add to 100 due to rounding.

outdoor/yard games. The study also confirms that HAMMER-SCHLAGEN is not a generic term within the outdoor/yard games market. Specifically, with respect to outdoor/yard games:

- 54.1 percent of respondents in the full sample (n=399) indicated a belief that HAMMER-SCHLAGEN is a brand name;
- 52.3 percent of respondents in the Minnesota and Wisconsin sub-sample (n=132) indicated a belief that HAMMER-SCHLAGEN is a brand name;
- 15.8 percent of respondents in the full sample indicated a belief that HAMMER-SCHLAGEN is a common name; and
- 22.0 percent of respondents in the Minnesota and Wisconsin sub-sample indicated a belief that HAMMER-SCHLAGEN is a common name.

114. Overall, the findings of the genericness study demonstrate that a material proportion of relevant consumers (i.e., in excess of the 50 percent threshold) believe that HAMMER-SCHLAGEN is a brand name within the relevant market. Only a small proportion of relevant consumers (i.e., well below the 50 percent threshold) believe that HAMMER-SCHLAGEN is a common name within the relevant market.

115. Accordingly, I conclude that with respect to outdoor/yard games, HAMMER-SCHLAGEN is a brand name and is not a generic term.

The surveys conducted in this case were designed and executed in accordance with accepted standards of survey research. All findings and conclusions are presented with a reasonable degree of certainty.

Keegan & Donato Consulting, LLC reserves the right to supplement and revise this report and the opinions expressed herein based on the availability of new information.

For Keegan & Donato Consulting, LLC:

A handwritten signature in black ink, appearing to read "Mark Keegan", is written over a horizontal line.

Mark Keegan

September 14, 2022

Date

THINGS TO DO > RESTAURANTS & FOOD

On Travel Channel, ‘Booze Traveler’ hits the Winter Carnival



“Booze Traveler” (Jack Maxwell in the fur-flap cap with the hammer in his hand) visited the Winter Carnival Beer Dabbler. (Photo courtesy Travel Channel)

By **JESS FLEMING** | jfleming@pioneerpress.com |

PUBLISHED: January 23, 2017 at 2:29 pm | UPDATED: January 24, 2017 at 8:30 am

Tune in to Travel Channel's "[Booze Traveler](#)" at 9 p.m. Monday, Jan. 24, to catch host Jack Maxwell's boozy tour of the Mighty Mississippi, ending in Minnesota.

Maxwell ice fishes with the makers of Gamle Ode Aquavit and hangs at the Winter Carnival Beer Dabbler. He ends the show by walking with the Vulcans in the Torchlight Parade.

The series features Maxwell, an actor and adventurer, traveling the world in search of the most interesting drinks. It is in its third season.

Tags:

Drinks

Restaurant news



Jess Fleming

Jess Fleming has been with the Pioneer Press since 1999, and has been covering the Eat beat since 2012. She is an adventurous eater, cook and gardener, but will only grow something she can eat. She is a graduate of the journalism school at the University of Minnesota and a native of Eastern Wisconsin, where she grew up eating good brats, good cheese and fresh vegetables from her dad's garden.

[Follow Jess Fleming @jessflem](#)



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BUSINESS

A dispute over Hammer-Schlagen in Stillwater zeroes in on quirky game's origin

The trademark owner of the nail-and-stump game sued a restaurant for offering the game after a licensing deal expired.

By Kristen Leigh Painter
(<https://web.archive.org/web/20220727182123/https://www.startribune.com/kristen-leigh-painter/6370565/>) Star Tribune

JULY 16, 2021 — 9:21AM

Two businesses in Stillwater are in a dispute over the lawn game hammerschlagen, the latest squabble over the rights to hammer nails into stumps for fun.

WRB Inc., which does business as Hammer-Schlagen, this week sued the Lumberjack Company, which operates a bar and restaurant in downtown Stillwater, alleging violations of its trademark and trade dress.

The case follows [a similar dispute earlier this year](https://web.archive.org/web/20220727182123/https://www.startribune.com/stillwater-company-wins-trademark-battle-over-nail-driving-game-hammer-schlagen/600034265/) (<https://web.archive.org/web/20220727182123/https://www.startribune.com/stillwater-company-wins-trademark-battle-over-nail-driving-game-hammer-schlagen/600034265/>) with a Chaska brewery and other cease-and-desist requests nationwide. All highlight the tricky business of trademark enforcement and the provenance of a nail-and-stump activity often associated with Oktoberfest, beer and German heritage.

WRB owns the intellectual property, including the name, logo, slogans and "trade dress" associated with the game. Hammer-Schlagen, or hammerschlagen, involves driving nails into the perimeter of a cross-section of a cottonwood tree stump using a cross-peen hammer.

The game, regularly played while drinking, is sometimes mistakenly thought to have originated in Germany in the 1800s. But hammerschlagen was created by Carl Schoene, who emigrated from Germany to Minnesota with his parents in 1957.

Schoene originally called the game Nagelspiel, after a children's toy in Germany.

He and his parents offered the game at their family restaurant, the [Gasthaus Bavarian Hunter](https://web.archive.org/web/20220727182123/https://gasthausbavarianhunter.com/about) (<https://web.archive.org/web/20220727182123/https://gasthausbavarianhunter.com/about>) near Stillwater, as a way to increase beer sales in the late 1960s.



ELLEN SCHMIDT | STAR TRIBUNE

Hammerschlagen, a game involving hammering nails into stumps for fun, is often associated with Oktoberfest, beer and German

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While there is evidence that Germany has long had a custom of hammering nails into wooden objects as a competitive activity (<https://web.archive.org/web/20220727182123/https://en.wikipedia.org/wiki/Nagelbalken>), Schoene and his father-in-law, Mike Wlaschin, developed and codified the set of rules and materials now called hammerschlagen that is commonly used in the Upper Midwest and at German cultural events across the United States.

James Martin, WRB's chief executive, said in the recent lawsuit that the company licensed use of the name, logo and slogans to the Lumberjack in February 2020. After the COVID-19 pandemic resulted in the restaurant's temporary closure, Lumberjack's owner and CEO Sara Jespersen told WRB she would not be renewing her Hammer-Schlagen licensing agreement when it expired in February 2021.

But the Lumberjack continued to offer the game to patrons after the license ended, the suit claims.

Martin said he contacted Jespersen in June to ask if she wanted to renew her Hammer-Schlagen license, which she declined. Jespersen did not respond to a request for comment and has not filed a formal response in court.

It's the latest in a series of legal steps Martin has taken against restaurants, breweries, festival organizers and competitors, something his lawyer Michael Frasier says is necessary to protect the intellectual property.

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"He has a lot of licensees nationwide. There are quite a few instances where someone just needs to be told this is a brand, this is a trademark and you can't use it," Frasier said. "They will then either become a licensee or they'll stop."

But sometimes it escalates.

In December, Martin sued Schram Haus Brewery in Chaska over trademark infringement allegations. The two parties settled the matter in March with the judge issuing a permanent injunction that the brewery no longer use the game. Aaron Schram, co-owner of Schram Haus, declined to comment.

In 2018, WRB and organizers for an Oktoberfest event in Spokane, Wash., also settled a trademark dispute.

Other entrepreneurs have tried to create and sell a retail version of the game but were soon slapped with a cease-and-desist letter from WRB.

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"We really pumped the brakes on the whole thing," said Marc Johnson, co-founder of MöbileSchlägen, a collapsible, portable version of the stump-and-hammer game, based in New York state. "He's pretty litigious."

Clayton Gray, who co-founded the Stump Company, said his fledgling startup was already facing mounting logistical challenges when Martin sent them a warning note.

"We pretty much closed up shop after that because we didn't want to deal with it," Gray said in an e-mail. "It seems his main job is seeking out copyright infringements over a game he didn't even invent."

Martin's lawyer says trademark owners have to protect their own intellectual property. WRB's website is covered in legal warnings and detailed explanations of what is and is not Hammer-Schlagen.

"My client, in general, is very reasonable about sitting down with people and trying to resolve things without bringing a lawsuit. He doesn't make money off lawsuits. He makes money in operations," said Frasier, Martin's lawyer. "This case was more egregious based on their history."

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They allege that the Lumberjack unlawfully used the trademark and trade dress after Jespersen had told WRB she was not offering the game at her restaurant.

Defending the actual trademark is the easy part, said Frasier. That includes the brand name or something that is "confusingly similar to those words," he said, as well as its slogans, such as "Got Wood?" "Get Nailed" and "Whack It."

"Trade dress is more confusing and more nuanced for some people," Frasier said.

He said the best example is the Coca-Cola bottle. While the shape of it serves no functional purpose, consumers associate the bottle's silhouette with Coke.

In the game of Hammer-Schlagen, that trade dress is a stump with nails around the edge of it where a hammer is used to drive nails into it for sport.

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"The question is whether someone is using something in a way causing confusion to the consumer," Frasier said. "In this case, we are talking about something virtually indistinguishable, being used in the same geographic region, as competitors. They don't have to be identical."

"If the Lumberjack Company had a 4x4 with nails down a straight line, nobody would be confused," he argues.

Kristen Leigh Painter is deputy business editor.

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OPINION

Answer Man: Don't get hammered over Hammer-Schlagen

March 11, 2019 01:30 PM

Editor's note: This Classic Answer Man was first published on Jan. 5, 2017

Dear Answer Man, I was hammering nails into a stump at a taproom recently and was told that the game, which I've always heard called [Hammer-Schlagen](https://twitter.com/hammer_schlagen)(https://twitter.com/hammer_schlagen) , is actually a brand name and if you're a bar owner, you can get in trouble if you have a nail-driving contest and call it Hammer-Schlagen without permission. Is this true? — Thor

You've hit the nail on the head, Thor. That harmless little game of driving nails into the perimeter of a big tree stump has been branded and trademarked, and the name Hammer-Schlagen is in legal terms the "common tradename" of a North St. Paul company, WRB Inc. of Minnesota. The company says the pastime was brought to America by **Carl Schoene**, who moved with his family from Germany to St. Paul in 1957 and whose family owned the popular [Gasthaus Bavarian Hunter](http://www.gasthausbavarianhunter.com)(<http://www.gasthausbavarianhunter.com>) restaurant just west of Stillwater.

The company acknowledges that there's a genre of nail-driving games, called Nagelspiele, that goes back into the mists of time in Germanic lore (and involves an ax, rather than a hammer), but [Hammer-Schlagen](http://www.hammerschlagen.com) is a brand name(<http://www.hammerschlagen.com>) no different than Pepsi or Pop-Tarts.

Nobody wants to get hammered by a lawyer complaining about trademark infringement, so here's what their website contends: "Hammer-Schlagen engages in commerce under a specific configuration of shapes, designs, and materials that compose a specific visual appearance." The visual appearance of the logo includes "a large, round circle; one or more nails; and a blacksmith's cross-peen hammer. Generally, the Hammer-Schlagen trade dress uses 16d common bright nails with a 3-pound hammer and plains cottonwood (because it is Minnesota's largest diameter tree)."

The website goes on to say that these other names and mottos are trademarked:

The phrase "Let's Play Hammer-Schlagen"

The phrase "Hammer-Schlagen" (a/k/a "hammerschlagen")

The phrase "Get Hammered"

The phrase "Get Nailed"

The phrase "Got Wood"

The phrase "Whack It"

The phrase "Get Bent"

The letters "HS"

The Hammer-Schlagen Rules

The rules are fairly straightforward, by the way, and a lot more interesting than Roberts Rules of Order. You can call 844-WHACK-IT to learn more.

How much trouble can you get into if you somehow, inadvertently, have a hammer-and-nail game that uses some variation on the Hammer-

Schlagen "trade dress," or you use the phrase "Get Hammered" in some similar context? I don't intend to find out.

This begs the question: Is [Jenga](http://www.jenga.com)(<http://www.jenga.com>) , another popular bar game, a registered trademark? Yes, that one's owned by Parker Brothers, a unit of Hasbro. Whether they try as hard to protect their trademark, I can't say.

Oh King of the Salt Mine, I understand it's winter, but we are Minnesotans, so the weather conditions really should not be a surprise to anyone. Watching our newspaper carrier do her very best to get your wonderful newspaper delivered is painful — I can't imagine how she is feeling!

Bless her heart. Why, oh, why don't people take care of the ice on their sidewalks and steps? Last I heard, it was a city ordinance to keep things clear.

Newspaper carriers, UPS delivery folks, garbage haulers and pizza delivery drivers all would appreciate some Minnesota nice! Spread the word (and some salt). — Steve

Good advice, Steve, not just for home owners but for all property owners, public and private. Due to the up-and-down temps this week, there's black ice everywhere. I visited a popular Rochester establishment Wednesday night where the parking lot was basically a hockey rink and I was the Zamboni driver.

You'll need a blowtorch to get all the ice off your property, but Steve's right, it's the law.

Exhibit C



CEASE & DESIST

Hammer-Schlagen@
P.O. Box #9305
N. St. Paul, MN 55109
www.HammerSchlagen.com
1 (844) WHACK-IT

Eichenfeld, LLC
ATTN: Marc Johnson, James Betters, Daniel J. Manges
7126 Fischer Road
Oak Field, NY 14125

17 November 2016

CC: Tracy Jong Law Firm, P.C.
ATTN: Tracy P. Jong, Cheng Ning
2300 Buffalo Road, Bdlb 100A
Rochester, NY 14624

THE CIRCUMSTANCES & OUR RESEARCH

We are WRB, Inc., the entity you cite as historical precedent in your patent application application #14/326,057 (the "Patent"). We have made multiple attempts to contact you. Having no response, we now write you this letter. We first learned of your unauthorized use of our Brand on 15 November 2016 through a publication online at <http://www.thebatavian.com/howard-b-owens/new-business-in-oakfield-aims-to-expand-market-for-old-german-game/144520>. In this article, we learned that you have engaged in our Service under multiple Elements of our Brand, such as our Hammer-Schlagen® trade name and Trade Dress, in commerce at least once: at the Caryville Inn (25 Main St, Oakfield, NY 14125) on 11 June 2016. Upon further review, we learned that you are replicating our Trade Dress and selling it to the public, thereby encouraging third-parties to infringe upon our intellectual property rights. And, it has come to our attention that you are promoting a false source and origin of our Brand. Also, you are falsely misrepresenting information materially related to our Brand. Furthermore, you are affiliating names with Elements of our Brand, namely our Trade Dress, which we do not endorse. Some statements can be found online at <https://www.facebook.com/mobileschlagen/about/> ("Facebook") and in your Patent. The correct information can be found online at <http://www.hammerschlagen.com/>.

We believe that you have counterfeited Elements of our Brand, notably our Hammer-Schlagen® trade name and Trade Dress, with knowledge that we own them and in willful disregard of our federal rights. On Facebook, you state that you are aware of our history by citing our predecessor, Carl Schoene, as being affiliated with our Service and Brand. You further expressly cite us by name on Facebook and in your Patent as the source and origin of our Service when offered under any Element of the Brand, primarily by our Trade Dress which you explicitly and expressly reference and describe.

Below, please find a description of our Brand, our allegations and demands, and the remedy we propose.

OUR BRAND

WRB, Inc., a Minnesota corporation, ("we," "us," and "our") offers entertainment services in the nature of providing persons an opportunity to participate in a game in which participants pound nails into wood (our "Service"). Our Service is commonly referred to as a nail driving competition. We offer our Service under a specific configuration of shapes, designs, colors, and/or materials that comprise a specific visual appearance (our "Trade Dress") which is visually distinctive from that of our competitors. Our Trade Dress is our primary trademark under which we and our licensees have and currently do business in the commerce of the United States.

When the public sees our Trade Dress, they immediately affiliate it with our other trademarks, service marks, and trade names (collectively, our "Trademarks"), some of which are registered with the United States Patent & Trademark Office and various States. Most notably, the public has come to affiliate our Trade Dress with our "Hammer-Schlagen" trademark. The public has also come to affiliate our Trade Dress with our Logo (seen in the upper left corner of this letter). Our other

Trademarks include, but are not necessarily limited to: the phrase "Let's Play Hammer-Schlagen;" the phrase "Get Hammered;" the phrase "Get Nailed;" the phrase "Got Wood;" the phrase "Whack It;" the phrase "Get Bent;" the letter combination "HS;" and other various words and phrases. We further have copywritten material that we display in conjunction with the offering of our Service, some of which are deposited with the United States Copyright Office such as the literary material entitled "Hammerschlagen Rules" registered with the United States Copyright Office under registration #TX 8-092-585 (collectively, our "Copyrights"). We are the owner of right to our Trade Dress, Trademarks, and Copyrights, which is collectively referred to herein as our "Brand." Our Brand is further described in more detail online at the following Internet location: <http://www.hammerschlagen.com/our_brand/>.

We, our predecessors, and licensees have operated under at least one element of our Brand (each an "Element") continuously and on a regular basis throughout the United States dating back into the 1950's: we are unaware of any other source or origin which has offered our Service under any Element of our Brand anywhere in the world predating our (or our predecessors) use. Though often times we are considered anonymous, our use of our Brand has created recognition in the mind of consumers in the market as the Hammer-Schlagen® family being the source and origin of our Service when provided under any Element thereof.

OUR ALLEGATIONS & DEMANDS

We believe that you engaged in our Service under at least one Element of our Brand in commerce without our permission, and thereby traded on the goodwill we have established in said Element. We believe that your use of our Brand confused and misdirected individual members of the public seeking our Service into believing that you are the source and origin of our Hammer-Schlagen® service. We further believe that you are encouraging members of the public to take up the same unlawful actions. From the information we have gathered regarding your use of our Brand, our use has priority over yours based upon our earlier and continuous use, as well as federal and/or state filings. Therefore, we believe that your use of our Brand is a violation of our rights.

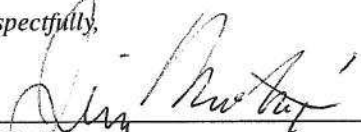
We believe you are aware of the existence of our Brand. We believe your activity is unlawful and actionable under state and/or federal law and may cause you to be held liable to us in every state in which you have operated under any Element of our Brand (or encouraged others to do the same). We demand that you immediately stop using each and every Element of our Brand and any other trade dress, trademark, service mark, trade name or other name, copyright, or thing that is confusingly similar therewith, except in cases where we otherwise expressly allow.

PROPOSED REMEDY

Our proposal is two fold. First, please promptly provide your written assurance ("Written Assurance") to us, stating the following: (1) you recognize our intellectual property rights as stated herein, agree not to contest them, and agree to immediately stop infringing upon them; (2) you will take the steps necessary to discontinue the infringing activities described herein and will clear-up confusions that have been created from your unauthorized use (including contacting media outlets that have reported on your infringing activities and removing infringing content from the Patent and Facebook); (3) you submit to the jurisdiction, law, venue, and forum of the Minnesota courts regarding the subject matter discussed herein; and (4) you agree to be held liable to us for the maximum legal and equitable relief allowed by law if you violate the promises you make in the Written Assurance. If you provide your Written Assurance to us in a manner we deem satisfactory, and abide by its promises, we will not pursue this matter further and will not assert any claim against you for damages, monetarily or otherwise, in any state or federal court. If you do not provide your Written Assurance to us within thirty (30) calendar days, we will be advised by you that you are unwilling to cease and desist your unlawful activities.

Second, we (or our licensing affiliate) will make an offer of trademark licensure to you within thirty (30) calendar days of the receipt of your Written Assurance. Though a patent might convey unto you some right to prohibit others from manufacturing a specific item, it does not convey any right to allow you to use (or to sub-license the use of) any Element of our Brand in the actual offering or rendering of our Service, including your counterfeiting of our Trade Dress. If you have an interest in manufacturing our Trade Dress, we look forward to a successful partnership.

Respectfully,



WRB, Inc.
By Its CEO, James Martin

17 November 2016
(Dated)

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Erikson Field, LLC
 Marc Johnson et. Al.
 7126 Fisher Rd
 Oakfield, NY 14125

9590 9402 1891 6104 2436 87

2. Article Number (Transfer from service label)
 7015 3430 0000 5340 9262

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee

B. Received by (Printed Name) *Marc Johnson* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, enter delivery address below:

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail Restricted Delivery
☐ Priority Mail Express®
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OAKFIELD, NY 14125

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Certified Mail Fee \$3.30
 Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.47
 Total Postage and Fees \$6.47

Sent To Erikson Field, LLC
 Marc Johnson et. Al.
 7126 Fisher Rd
 Oakfield, NY 14125

City, State, ZIP+4®
 Oakfield, NY 14125

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

0015 11
 Postmark Here
 11/17/2016

7015 3430 0000 5340 9262

Subject: US PTO App. Ser. Nos. 97012566 & 97029060 (KNOGGLE)
From: Hammer-Schlagen® <trademark@hammerschlagen.com>
Date: 11/2/2022, 1:11 PM
To: tjong@tracyjonglawfirm.com
CC: docketclerk@tracyjonglawfirm.com

Hello, Ms. Jong-

I write as a matter of courtesy to you on behalf of WRB, Inc., as its chief executive officer. As you may recall, I first learned of your client's counterfeiting activities on or about 15 November 2016. Until recently, I have been under the impression that your client stopped using its MOBILESCHLAGEN counterfeit of our HAMMER-SCHLAGEN brand as Marc, Jim, and Dan verbally promised during our telephone conversation in 2017.

I learned of your client's trademark filings for KNOGGLE in the past couple of days. On their face, those filings seem to be all fine and dandy. But upon further review, I learned that your client is using the MOBILESCHLAGEN counterfeit to promote and sell its new product. As the KNOGGLE mark is currently being used as a synonym of the MOBILESCHLAGEN counterfeit, I am currently of the opinion the KNOGGLE mark is a counterfeit and it is therefore unregistrable. (But, I must conduct further research and consult with counsel to confirm these initial findings.)

As your client has demonstrated it is unable to stop its counterfeiting activities, the only resolve I can see is for WRB to control the MOBILESCHLAGEN counterfeit. I propose a simple solution: transfer ownership of the domain name "mobileschlagen.com" to WRB, Inc.; destroy all uses of the MOBILESCHLAGEN counterfeit (including your client's uses on social media); and never use the MOBILESCHLAGEN counterfeit (or anything confusingly similar) ever again. In return, I will not oppose the KNOGGLE applications.

As you know, the standard for trademark infringement is a likelihood of confusion; it is not determined by the opinion of a couple of persons or by agreement of competitors; it is based upon the opinion held by the public at large. Though I cannot speak for the public at large, it is my hope that taking the actions stated in the paragraph above will allow your client's new KNOGGLE product to not be confused with my HAMMER-SCHLAGEN product thereby allowing for their lawful competition with WRB. Please advise if my proposal is acceptable, and, if so, how you wish to proceed to affect the same.

-Jim Martin


June 12, 2016 - 6:43pm

New business in Oakfield aims to expand market for old German game

posted by Howard B. Owens in MöbileSchlägen, Oakfield, Business, news.



Three guys in Oakfield think they've hit the nail on the head when it comes to their new business. They've put a new twist on an old German game. They introduced the concept at a tournament yesterday held at the Caryville Inn.



Schedules & Results

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The game is MöbileSchlägen, a portable version of *hammerschlägen*.

In *schlägen*, you get a cross-peen hammer and a nail and you get one whack at the nail per turn, hitting it with the wedge (or peen) end. The starting position is with the hammer on the table outside the wood block, making it harder to aim. The nail is tapped in to a depth equal to a line on the hammer, so everybody starts at an equal distance.

The first person with the head of the nail flush with the wood wins.

"Being first is pretty cool, but the last thing you want to do is be last," said Marc Johnson, one of the co-inventors of the mobile version of the game.

Last means ridicule from your buddies, at the least, and if alcohol is involved, it might mean buying a round of drinks.

Teasing and harassing is part of the fun of the game, because if you can goad a competitor into talking while he or she holds the hammer, (the rule is, "no hammer talk") that person loses a turn.

Johnson said for years, every time he hosts a party at his house, he and the guests play *hammerschlägen*, but hauling around the giant tree stumps needed for the game made it impractical for tailgate parties or picnics.

A few years ago, he brought two logs to a family gathering in Vermont and that's when he started to think there had to be a better way.

"Everybody loved it, but it killed my back," Johnson said. "It was a bad idea. You're on a mountain and you're rolling those stumps around."

When he got home, he and his friend James Betters started imagining a mobile version of the game, but lacked the engineering background to make it a reality, so Dan Mangus joined the team.

They formed a company, drew up their plans and filed for a patent, which was issued in March.

The end-grain wood plate, which can be laser etched with any possible logo, fits snugly in a hard plastic base, which rests on sturdy, but foldable, legs.

"Basically, it fits in a bag that looks like a big banjo and you can throw it over your shoulder and carry it a lot easier than a 300-pound stump," Mangus said.

It took a few prototypes to get the right design and then a long search to find the right end-grain wood with the right density to take in a pounded nail easily, but not too easily.

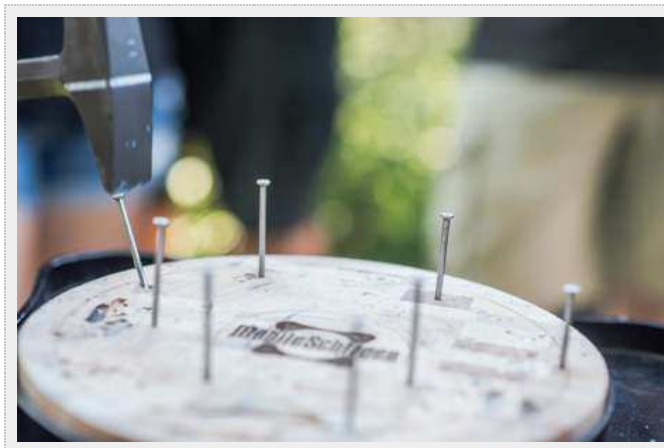
And lest would-be competitors might think they can make their own log inserts (the inserts need to be replaced after they fill up with nails), the design requires a properly cut and fitted log into the reverse-cupped holder. This design not only improves safety and durability, but with the patent, it also prevents copycat manufacturers from making replacement parts.

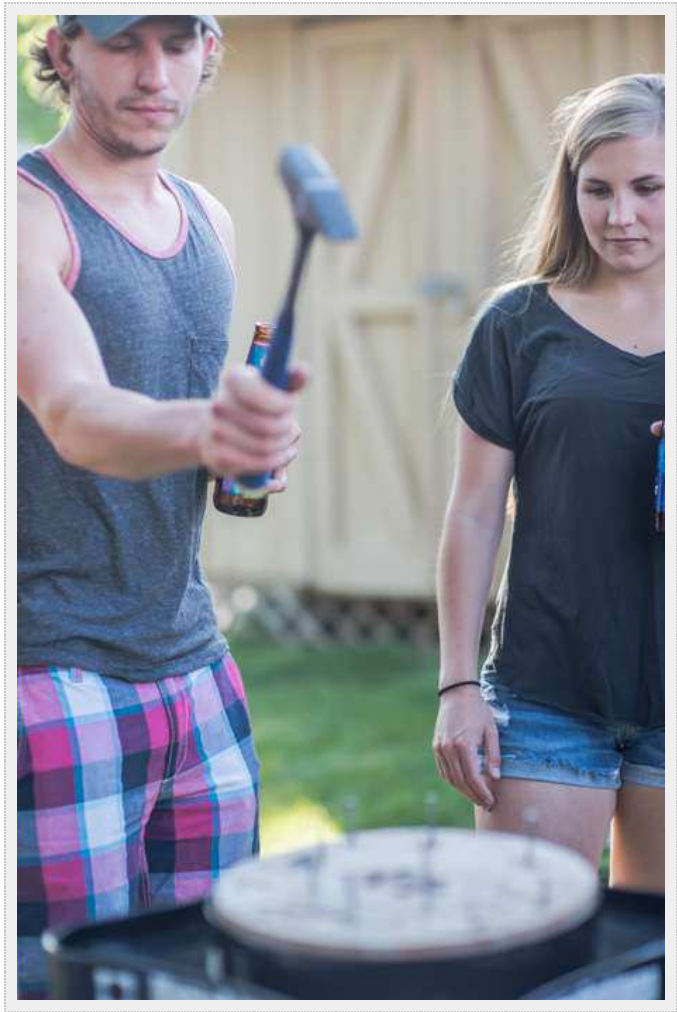
Some 40 or 50 people showed up for the game's public debut at the Caryville Inn yesterday to compete in the first official MöbileSchlägen tournament.

There seemed to be no shortage of fun nor frustration during the tournament.

The next big step for the entrepreneurs is a Kickstarter campaign to fund the manufacturing of games for consumers. If that does well, they hope to ship the first games to customers by Spring.







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June 14, 2016 - 2:24am

#1

Ed Hartgrove



 Offline

Last seen: 3 years 7 months ago

Joined: Dec 20 2012 - 11:54am

Sounds like a great game. That being said, I'd make a suggestion to the "developers" of MöbileSchlägen.

Unless you are independently wealthy, or have great liability insurance, you might want to think about incorporating a walled-in enclosure (ie. canvas/plastic tarp), to avoid any chance of a high-speed, flying piece of shrapnel from a broken nail head causing injury to onlookers.

AND, safety glasses for the participants. Ask any carpenter worth his salt. One lost eye can cost you everything you own.


Just a suggestion. Good luck on your enterprise!

[Log in](#) or [register](#) to post comments

December 13, 2016 - 9:36pm

#2

Jim Martin



Offline

Last seen: 6 years 1 month ago

Joined: Nov 15 2016 - 6:50pm


We (WRB, Inc. of Minnesota) are the source and origin of our Hammer-Schlagen® entertainment service. Our predecessor of right started it in Stillwater, MN several decades ago. Please note that the images above depict our very well-recognized trade dress (which is our primary trademark, under which we continue to operate throughout the United States).


Please further note that a patent does not give a person a legal right to manufacture. Instead, it gives a person a right to prevent others from manufacturing. And, it most definitely does not convey any right to counterfeit a trade dress. Please be advised that the subjects of your article expressly identify us in their patent as the source of the [Hammer-Schlagen® family of trademarks](#), which includes the trade dress depicted in the images above.

If you would please be so kind as to correct the factually incorrect information in your article, it would be appreciated very much.

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5/5
Exhibit C, p.9

THE WALL STREET JOURNAL.



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The Wall Street Journal ✓

November 25, 2016 · 🌐

Hammerschlagen, "the greatest tailgate game ever invented," demands strength, dexterity, focus and, often, a lot of beer. Above all, it requires a tree stump. And good stumps aren't easy to come by.



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MöbileSchlägen: The Anywhere Game! Skill. Strategy. Fun.

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<https://www.wsj.com/articles/the-hardest-thing-about-hammerschlagen-is-scoring-a-tree-stump-1480005000>

A-HED

The Hardest Thing About Hammerschlagen Is Scoring a Tree Stump

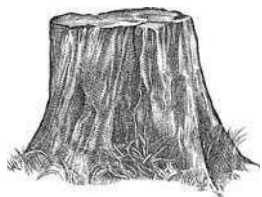
Hammerschlagen needs nails, hammer and huge block of wood—not sold in stores

By *Rebecca Davis O'Brien*

Nov. 24, 2016 11:30 am ET

Tyler Wilbricht was driving on the rural outskirts of Madison, Wis., last spring when he spotted the perfect gift for his brother's wedding: a soggy maple tree lying in massive sections on the side of the road near a dairy farm.

Mr. Wilbricht's brother, Nick, is a devotee of Hammerschlagen—or Stump, as some call it—a game that is increasingly popular at tailgate parties, outdoor concerts, beer festivals and family barbecues.



A tree stump

The game is simple: players compete to hammer nails into a circular wood surface. In Stump, players typically must flip the hammer in the air before striking their opponents' nails; the player with the last nail standing wins. In Hammerschlagen (German for hammer strike, a nod to its supposed Bavarian origins), each player strikes his own nail. The task demands strength, dexterity, focus and, often, a lot of beer.

Above all, it requires a tree stump. And good stumps aren't easy to come by.

Which is why Mr. Wilbricht later returned to the farm to heave two stumps into the back of his pickup truck, disrupting a nest of baby mice. He left \$20—and a note with his cellphone number in case it wasn't enough—in the farmer's mailbox.



A historic photo of the game at a company picnic in western New York.

PHOTO: OAKFIELD HISTORICAL SOCIETY

“There were a whole bunch of cows checking me out,” said Mr. Wilbricht, a 25-year-old UPS employee who also works in construction.

Joe Mattson, a 39-year-old native of Washington state, still remembers his first stump, at a Harvard-Princeton football tailgate in 2002. “It was massive, like old growth cedar,” Mr. Mattson recalled. A former Harvard lineman, dressed in “some kind of robe,” pulled up in a hired Town Car with the stump in his trunk.

“The greatest tailgate game ever invented then unfolded,” Mr. Mattson said.

Mr. Mattson, also a former Harvard player who works for a marketing agency, brought Stump to tailgates for University of Washington football games, where he and his friends have experimented with different stump sources, including a repurposed mailbox post and a shrink-wrapped bundle of firewood turned on its end. He keeps a couple of hammers and “a healthy amount” of heavy-duty 10-penny nails in his tailgate kit.

This fall, the city of Bend, Ore., celebrated Oktoberfest with a 280-pound, 30-inch tall fir stump with a 28-inch diameter, which had to be lowered in with a crane. The impressive stump came courtesy of Natural Edge Furniture, a local salvaged-wood furniture business.



Players at the Shelf Ice Brewfest last year in Michigan City, Ind.

PHOTO: PAUL KEMIEL/ASSOCIATED PRESS

“As a furniture company, it’s sometimes difficult to participate” in Oktoberfest, said Mike Ross, the company’s owner. “We don’t do food, we dance poorly. As it turns out, we have good stumps.”

At home in Wisconsin, Mr. Wilbricht spent weeks preparing the 250-pound stump he acquired for his brother. He sanded and lacquered it, and fended off friends eager to drive nails into it. “It took a little willpower,” he said, but he presented the stump intact at his brother’s October wedding.

After the ceremony, still in her wedding dress, Karin Wilbricht, 26, started a game with her new husband and in-laws, “talking smack to them about who was going to win,” she said.

The dance floor emptied as people gathered to watch. Ms. Wilbricht, who works as an underwriter for the Minnesota Housing Finance Agency, worried about safety: “At some point, some of the nails kind of go rogue and fly off the table.”

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As with other DIY drinking games—think beer pong and cornhole—entrepreneurs have tried to capitalize on the game’s growth. But mass marketing a product involving tree stumps is itself a challenge.

Clayton Gray and Brendan Harder, who discovered the game as students at the Rochester Institute of Technology, started The Stump Company in 2013 with plans

to take the game nationwide.

But they found that some states have regulations that require businesses to confirm the wood they are shipping is free of invasive pests. Another problem: It costs several hundred dollars to ship a full-size stump across the country.

The pair tested out stumps at Mr. Gray's parents' farm and found a local source of wood in Philadelphia, but after a Kickstarter campaign foundered, The Stump Company was put on hold. In recent months, though, people in search of stumps have reached out to the company through its Facebook page.

"I feel like it's starting to take off," said Mr. Gray, 26 years old, who has helped supply stumps to people "under the table" but not through the company.

Three men in western New York received a patent earlier this year for a "collection of nail hammering game pieces," including a support tray, a table and a circular 4-inch-thick block. Their invention, called "MöbileSchlägen," aims to resolve the prohibitive inconvenience of stump transportation.

"I was hauling these stumps around," said MöbileSchlägen co-founder Marc Johnson, whose family has been playing the game in their backyard for 15 years. "I literally took two stumps to Vermont to my wife's aunt's house. It's not that fun rolling a 300-pound stump up a mountain. That's why we went mobile."

Stump entrepreneurs also risk getting nailed with trademark infringement lawsuits.

Both The Stump Company and MöbileSchlägen have drawn the ire of Jim Martin, a suspender-clad 35-year-old from Lake Elmo, Minn., who spends his days prepping thick slices of cottonwood for use at beer festivals and music venues.

Mr. Martin's company, WRB Inc., gets paid to host games around the U.S., providing stumps, tools and fingerless drinking gloves. It claims the exclusive right to do so—it trademarked the name "Hammer-Schlagen" as well as a number of associated phrases, including "Get Hammered" and "Get Nailed." (Unregistered trademarks include "Whack It" and "Get Bent.")

Mr. Martin tries to chase off competitors offering similar games in commercial settings. Last year, WRB wrote a cease-and-desist email to The Stump Company, and recently sent messages to the MöbileSchlägen team. "Our primary concern is the dilution of our trademark," Mr. Martin said.

In August, WRB started offering franchising opportunities in Minnesota for people who want to host Hammer-Schlagen games using the trademarked phrases and rules.



Jim Kusler, left, watches Bode Weinzetl attempt to hit a nail at Oktoberfest in Deerwood, Minn., in 2012.

PHOTO: AP

For would-be players lacking a ready source of suitable stumps, “Tonight Show” host Jimmy Fallon might offer a solution. When he played Stump with several guests on the set of his previous NBC show, “Late Night with Jimmy Fallon,” Mr. Fallon used a \$249 side table sold by West Elm, according to the show’s props department.

A spokesman for West Elm said it wasn’t aware of Mr. Fallon’s unorthodox use of the table, which is made from solid cypress wood.

Write to Rebecca Davis O’Brien at Rebecca.OBrien@wsj.com

Appeared in the November 25, 2016, print edition as ‘

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MöbileSchlägen: The Anywhere Game! Skill. Strategy. Fun.

MöbileSchlägen is a backyard, tailgate, mobile nail-hammering game. A fun, yet challenging & competitive game of skill and strategy!



Marc Johnson
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More

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pledged of US\$ 150,000 goal

108

backers

 Games









 Buffalo, NY

Funding Unsuccessful

The project's funding goal was not reached on Tue, April 11 2017 8:12 PM CDT

Whois Record for KNoggle.net

— Domain Profile

Registrant	Registration Private	
Registrant Org	Domains By Proxy, LLC	
Registrant Country	us	
Registrar	GoDaddy.com, LLC IANA ID: 146 URL: https://www.godaddy.com Whois Server: whois.godaddy.com abuse@godaddy.com (p) 14806242505	
Registrar Status	clientDeleteProhibited, clientRenewProhibited, clientTransferProhibited, clientUpdateProhibited	
Dates	721 days old Created on 2021-01-31 Expires on 2024-01-31 Updated on 2022-12-15	
Name Servers	NS1.MCWNYY.NET (has 88 domains) NS2.MCWNYY.NET (has 88 domains)	
Tech Contact	Registration Private Domains By Proxy, LLC DomainsByProxy.com, Tempe, Arizona, 85284, us (p) 14806242599 (f) 14806242598	
IP Address	23.227.38.74 - 3,428,112 other sites hosted on this server	
IP Location	 - Ontario - Ottawa - Shopify Inc.	
ASN	 AS13335 CLOUDFLARENET, US (registered Jul 14, 2010)	
Domain Status	Registered And No Website	
IP History	6 changes on 6 unique IP addresses over 2 years	
Registrar History	1 registrar	
Hosting History	2 changes on 3 unique name servers over 2 years	

— Website

Website Title None given.

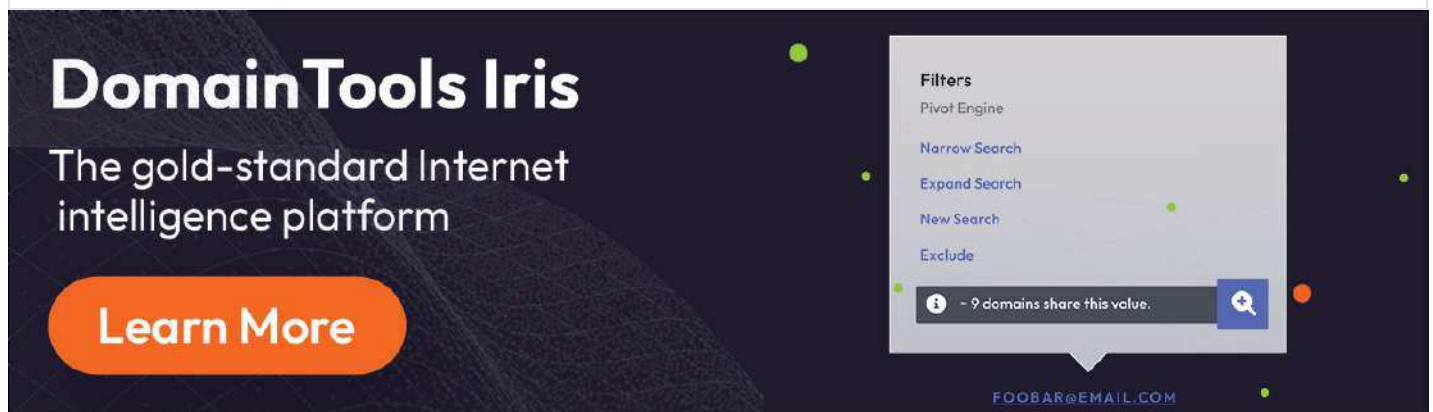


Whois Record (last updated on 20230122)

Domain Name: knoggle.net
Registry Domain ID: 2588277923_DOMAIN_NET-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: <https://www.godaddy.com>
Updated Date: 2022-12-15T11:05:08Z
Creation Date: 2021-01-31T09:58:12Z
Registrar Registration Expiration Date: 2024-01-31T09:58:12Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited <https://icann.org/epp#clientTransferProhibited>
Domain Status: clientUpdateProhibited <https://icann.org/epp#clientUpdateProhibited>
Domain Status: clientRenewProhibited <https://icann.org/epp#clientRenewProhibited>
Domain Status: clientDeleteProhibited <https://icann.org/epp#clientDeleteProhibited>
Registry Registrant ID: Not Available From Registry
Registrant Name: Registration Private
Registrant Organization: Domains By Proxy, LLC
Registrant Street: DomainsByProxy.com
Registrant Street: 2155 E Warner Rd
Registrant City: Tempe
Registrant State/Province: Arizona
Registrant Postal Code: 85284
Registrant Country: US
Registrant Phone: +1.4806242599
Registrant Phone Ext:
Registrant Fax: +1.4806242598
Registrant Fax Ext:
Registrant Email: Select Contact Domain Holder link at
<https://www.godaddy.com/whois/results.aspx?domain=knoggle.net>
Registry Admin ID: Not Available From Registry
Admin Name: Registration Private
Admin Organization: Domains By Proxy, LLC
Admin Street: DomainsByProxy.com
Admin Street: 2155 E Warner Rd
Admin City: Tempe
Admin State/Province: Arizona
Admin Postal Code: 85284
Admin Country: US
Admin Phone: +1.4806242599
Admin Phone Ext:
Admin Fax: +1.4806242598
Admin Fax Ext:
Admin Email: Select Contact Domain Holder link at
<https://www.godaddy.com/whois/results.aspx?domain=knoggle.net>
Registry Tech ID: Not Available From Registry
Tech Name: Registration Private
Tech Organization: Domains By Proxy, LLC
Tech Street: DomainsByProxy.com
Tech Street: 2155 E Warner Rd
Tech City: Tempe
Tech State/Province: Arizona
Tech Postal Code: 85284
Tech Country: US
Tech Phone: +1.4806242599

Tech Phone Ext:
Tech Fax: +1.4806242598
Tech Fax Ext:
Tech Email: Select Contact Domain Holder link at
<https://www.godaddy.com/whois/results.aspx?domain=knoggle.net>
Name Server: NS1.MCWNYY.NET
Name Server: NS2.MCWNYY.NET
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: <http://wdprs.internic.net/>
>>> Last update of WHOIS database: 2023-01-22T23:55:53Z <<<
For more information on Whois status codes, please visit <https://icann.org/epp>

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The advertisement for DomainTools Iris features a dark blue background with a subtle grid pattern. On the left, the text "DomainTools Iris" is displayed in a large, white, sans-serif font, followed by "The gold-standard Internet intelligence platform" in a smaller white font. Below this text is an orange rounded rectangle containing the words "Learn More" in white. On the right side, there is a screenshot of the DomainTools Iris interface. This interface includes a "Filters" section with options like "Pivot Engine", "Narrow Search", "Expand Search", "New Search", and "Exclude". Below the filters, a status bar shows a magnifying glass icon, the text "- 9 domains share this value.", and a blue button with a plus icon. At the bottom right of the interface, the domain "FOOBAR@EMAIL.COM" is visible. The entire advertisement is framed by a thin green border.

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